

# APPROPRIATIONS

## CHAPTER 1

### HOUSE BILL NO. 1001

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the legislative branch of state government; to provide for applications, transfers, and cancellation of unexpended appropriations; to amend and reenact sections 54-03-20 and 54-35-10 of the North Dakota Century Code, relating to legislative compensation; to provide for a report; 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 the insurance regulatory trust fund and the capitol building fund, not otherwise appropriated, to the legislative branch of state government for the purpose of defraying the expenses of the legislative branch of state government, for the fiscal period beginning with the effective date of this Act and ending June 30, 2021, as follows:

##### Subdivision 1.

#### SIXTY-SIXTH AND SIXTY-SEVENTH LEGISLATIVE ASSEMBLIES AND BIENNIUM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$10,233,424	\$957,420	\$11,190,844
Operating expenses	3,694,591	710,647	4,405,238
Capital assets	6,000	100,000	106,000
National conference of state legislatures	<u>225,155</u>	<u>38,278</u>	<u>263,433</u>
Total all funds	\$14,159,170	\$1,806,345	\$15,965,515
Less estimated income	0	<u>140,000</u>	<u>140,000</u>
Total general fund	\$14,159,170	\$1,666,345	\$15,825,515

##### Subdivision 2.

#### LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$9,049,530	\$916,187	\$9,965,717
Operating expenses	2,911,608	231,749	3,143,357
Capital assets	0	<u>6,000</u>	<u>6,000</u>
Total all funds	\$11,961,138	\$1,153,936	\$13,115,074

Less estimated income	<u>70,000</u>	<u>0</u>	<u>70,000</u>
Total general fund	\$11,891,138	\$1,153,936	\$13,045,074
Full-time equivalent positions	36.00	0.00	36.00

Subdivision 3.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$26,050,308	\$2,820,281	\$28,870,589
Grand total special funds	70,000	140,000	210,000
Grand total all funds	\$26,120,308	\$2,960,281	\$29,080,589

**SECTION 2. LEGISLATIVE ASSEMBLY ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the 2019-21 biennium one-time funding items included in the appropriation for the legislative assembly in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Digital signage replacement	\$0	\$40,000
Voting system upgrades	0	100,000
Computer and iPad replacement	0	<u>517,760</u>
Total all funds	\$0	\$657,760
Less estimated income	<u>0</u>	<u>140,000</u>
Total general fund	\$0	\$517,760

The 2019-21 biennium one-time funding amounts are not part of the entity's base budget for the 2021-23 biennium. The legislative assembly shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the 2019-21 biennium one-time funding items included in the appropriation for the legislative management and legislative council in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Redistricting equipment	\$0	\$22,400
Computer replacement	0	124,856
Council of state governments conference	<u>0</u>	<u>7,500</u>
Total general fund	\$0	\$154,756

The 2019-21 biennium one-time funding amounts are not part of the entity's base budget for the 2021-23 biennium. The legislative council shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. ESTIMATED INCOME - CAPITOL BUILDING FUND.** The estimated income line item in subdivision 1 of section 1 of this Act includes \$140,000 from the capitol building fund for digital signage replacement and voting system upgrades for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. TRANSFERS.** Notwithstanding section 54-16-05, the director of the office of management and budget shall transfer appropriation authority between line items of the legislative management and legislative council as may be requested by



the chairman of the legislative management or the director of the legislative council upon the finding by the chairman or the director that the nature of studies and duties assigned to the legislative management or legislative council requires the transfers in properly carrying on the legislative management's and legislative council's functions and duties. The director of the office of management and budget shall similarly make transfers of appropriation authority between the line items for the sixty-sixth and sixty-seventh legislative assemblies, upon request by the chairman of the legislative management or the director of the legislative council upon the finding by the chairman or director that the transfers are required for the legislative assembly to carry on its functions and duties.

**SECTION 6. APPLICATION, TRANSFER AUTHORITY, AND CANCELLATION OF UNEXPENDED APPROPRIATIONS.** Sections 54-16-04 and 54-44.1-11 do not apply to chapter 26 of the 2017 Session Laws. The director of the office of management and budget shall make transfers of appropriation authority between the line items and the agencies of the legislative branch within section 1 of that chapter as requested by the chairman of the legislative management or the director of the legislative council. The office of management and budget shall cancel unexpended appropriations for the legislative assembly and legislative council enacted prior to the 2017-19 biennium as directed by the chairman of the legislative management or the director of the legislative council.

**SECTION 7. AMENDMENT.** Section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-20. Compensation and expense reimbursement of members of the legislative assembly.**

1. Each member of the legislative assembly is entitled to receive as compensation for services the sum of one hundred ~~seventy-seven~~eighty-one 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.
2. a. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed per calendar month the amount established under this subdivision by the director of the office of management and budget for lodging in state and which may not exceed the rate provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. On August first of each even-numbered year, the director of the office of management and budget shall set the maximum monthly reimbursement for the subsequent two-year period at an amount equal to thirty times seventy percent of the daily lodging reimbursement in effect on that date as provided under subdivision d of subsection 2 of section 44-08-04.
- b. Notwithstanding subdivision a:
  - (1) A member of the legislative assembly may elect to be reimbursed for less than the amount to which the legislator is entitled under this subsection by claiming the lesser amount on a voucher submitted with the receipt required by section 44-08-04.
  - (2) The legislative management may establish guidelines that may result in a reduced maximum reimbursement for a single dwelling in which

two or more legislators share lodging and the total rent for that dwelling exceeds the amount to which a legislator is entitled under subdivision a.

3. a. 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.
- b. 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 the maximum monthly reimbursement allowed under subdivision a of subsection 2.
4. The amount to which each legislator is entitled must be paid following the organizational session in December and each month upon submission of a voucher and appropriate documentation during a regular or special session, consistent with section 26 of article XI of the constitution of North Dakota.
5. If during a special session, the legislative assembly adjourns for more than three days, a member of the legislative assembly is entitled to receive compensation during those days only while in attendance at a standing committee if the legislator is a member of that committee, a majority or minority leader, or a legislator who is not on that committee but who has the approval of a majority or minority leader to attend.
6. 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.
7. a. In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of ~~four~~five hundred ~~ninety-five~~five dollars a month, paid monthly.
- b. 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.
- c. The majority and minority leaders of the house and senate and the chairman of the legislative management, 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 three hundred ~~fifty-fivesixty-two~~ dollars per month during the biennium for their execution of public duties.

8. 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)].
9. Before each regular legislative session, the legislative management shall make recommendations and submit any necessary legislation to adjust legislative compensation amounts.

**SECTION 8. AMENDMENT.** Section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-20. Compensation and expense reimbursement of members of the legislative assembly.**

1. Each member of the legislative assembly is entitled to receive as compensation for services the sum of one hundred ~~eighty-one~~eighty-six 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.
2. a. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed per calendar month the amount established under this subdivision by the director of the office of management and budget for lodging in state and which may not exceed the rate provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. On August first of each even-numbered year, the director of the office of management and budget shall set the maximum monthly reimbursement for the subsequent two-year period at an amount equal to thirty times seventy percent of the daily lodging reimbursement in effect on that date as provided under subdivision d of subsection 2 of section 44-08-04.
  - b. Notwithstanding subdivision a:
    - (1) A member of the legislative assembly may elect to be reimbursed for less than the amount to which the legislator is entitled under this subsection by claiming the lesser amount on a voucher submitted with the receipt required by section 44-08-04.
    - (2) The legislative management may establish guidelines that may result in a reduced maximum reimbursement for a single dwelling in which two or more legislators share lodging and the total rent for that dwelling exceeds the amount to which a legislator is entitled under subdivision a.
3. a. 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.
- b. 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 the maximum monthly reimbursement allowed under subdivision a of subsection 2.
4. The amount to which each legislator is entitled must be paid following the organizational session in December and each month upon submission of a voucher and appropriate documentation during a regular or special session, consistent with section 26 of article XI of the constitution of North Dakota.
  5. If during a special session, the legislative assembly adjourns for more than three days, a member of the legislative assembly is entitled to receive compensation during those days only while in attendance at a standing committee if the legislator is a member of that committee, a majority or minority leader, or a legislator who is not on that committee but who has the approval of a majority or minority leader to attend.
  6. 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.
  7. a. In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of five hundred fiveeighteen dollars a month, paid monthly.
    - b. 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.
    - c. The majority and minority leaders of the house and senate and the chairman of the legislative management, 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 three hundred sixty-two-seventy-one dollars per month during the biennium for their execution of public duties.

8. 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)].
9. Before each regular legislative session, the legislative management shall make recommendations and submit any necessary legislation to adjust legislative compensation amounts.

**SECTION 9. AMENDMENT.** Section 54-35-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-10. Compensation of members and leadership.**

1. The members of the legislative management and the members of any committee of the legislative management are entitled to be compensated for the time spent in attendance at sessions of the legislative management and of its committees at the rate of one hundred ~~seventy-seven~~eighty-one 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.
2. In addition to the compensation provided in subsection 1, the chairman of the legislative management is entitled to receive an additional five dollars for each day spent in attendance at sessions of the legislative management and of its committees, and the chairman of each of the legislative management's committees is entitled to receive five dollars for each day spent in attendance at sessions of the legislative management or of the committee which the person chairs.

**SECTION 10. AMENDMENT.** Section 54-35-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-10. Compensation of members and leadership.**

1. The members of the legislative management and the members of any committee of the legislative management are entitled to be compensated for the time spent in attendance at sessions of the legislative management and of its committees at the rate of one hundred ~~eighty-one~~eighty-six 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.
2. In addition to the compensation provided in subsection 1, the chairman of the legislative management is entitled to receive an additional five dollars for each day spent in attendance at sessions of the legislative management and of its committees, and the chairman of each of the legislative management's committees is entitled to receive five dollars for each day spent in attendance at sessions of the legislative management or of the committee which the person chairs.

**SECTION 11. EFFECTIVE DATE.** Sections 7 and 9 of this Act become effective on July 1, 2019, and sections 8 and 10 of this Act become effective on July 1, 2020.

**SECTION 12. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 2

### HOUSE BILL NO. 1002

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the judicial branch; to amend and reenact sections 27-02-02, 27-02.1-01, 27-02.1-02, 27-02.1-03, 27-02.1-04, 27-02.1-05, 27-02.1-06, 27-02.1-07, 27-02.1-08, 27-02.1-09, and 27-05-03 of the North Dakota Century Code, relating to salaries of justices of the supreme court, the temporary court of appeals, and salaries of district judges; to provide for a report; to provide for a transfer; to provide a statement of legislative intent; to provide for a study; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the judicial branch for the purpose of defraying the expenses of the judicial branch for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

Subdivision 1.

#### SUPREME COURT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$10,909,112	\$429,608	\$11,338,720
Operating expenses	2,731,582	(25,820)	2,705,762
Capital assets	0	977,500	977,500
Judges' retirement	80,764	(80,764)	0
Guardianship monitoring program	316,204	(33,162)	283,042
Total all funds	\$14,037,662	\$1,267,362	\$15,305,024
Less estimated income	0	970,000	970,000
Total general fund	\$14,037,662	\$297,362	\$14,335,024

Subdivision 2.

#### DISTRICT COURTS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$67,602,628	\$5,639,640	\$73,242,268
Operating expenses	20,881,207	(484,305)	20,396,902
Capital assets	0	139,852	139,852
Judges' retirement	343,290	(62,958)	280,332
University of North Dakota central legal research	40,000	(40,000)	0
Total all funds	\$88,867,125	\$5,192,229	\$94,059,354
Less estimated income	1,339,138	320,458	1,659,596
Total general fund	\$87,527,987	\$4,871,771	\$92,399,758

## Subdivision 3.

## JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Judicial conduct commission and disciplinary board	<u>\$1,174,822</u>	<u>\$76,140</u>	<u>\$1,250,962</u>
Total all funds	\$1,174,822	\$76,140	\$1,250,962
Less estimated income	<u>482,701</u>	<u>0</u>	<u>482,701</u>
Total general fund	\$692,121	\$76,140	\$768,261

## Subdivision 4.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$102,257,770	\$5,245,273	\$107,503,043
Grand total special funds	<u>1,821,839</u>	<u>1,290,458</u>	<u>3,112,297</u>
Grand total all funds	\$104,079,609	\$6,535,731	\$110,615,340
Full-time equivalent positions	355.50	7.50	363.00

**SECTION 2. ONE-TIME FUNDING - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Pipeline protest trials	\$1,500,000	\$0
Copy machines	0	82,500
Audio and visual equipment	0	64,852
Law library remodel	0	<u>970,000</u>
Total all funds	\$1,500,000	\$1,117,352
Less estimated income	<u>1,500,000</u>	<u>970,000</u>
Total general fund	\$0	\$147,352

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The supreme court shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. ESTIMATED INCOME - CAPITOL BUILDING FUND - LEGISLATIVE INTENT.** The estimated income line item in subdivision 1 of section 1 of this Act includes \$970,000 of one-time funding from the capitol building fund to remodel the supreme court law library space in the judicial wing of the state capitol. It is the intent of the sixty-sixth legislative assembly that any remodel of judicial wing space result in at least two study rooms remaining in the judicial wing for use by attorneys appearing in cases before the supreme court.

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

**27-02-02. Salaries of justices of supreme court.**

The annual salary of each justice of the supreme court is ~~one hundred fifty two thousand four hundred thirty six dollars through June 30, 2016~~ one hundred fifty nine thousand four hundred nine dollars through June 30, 2020, and ~~one hundred fifty~~



~~seven thousand nineone hundred sixty-three thousand three hundred ninety-four dollars thereafter. The chief justice of the supreme court is entitled to receive an additional four thousand three hundred seventy-seven dollars per annum through June 30, 2016four thousand five hundred eight dollars per annum through June 30, 2020, and four thousand five hundred eightfour thousand six hundred twenty-one dollars per annum thereafter.~~

**SECTION 5. AMENDMENT.** Section 27-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-01. Temporary court of appeals established - Jurisdiction - Writ authority - Administration. (Effective through January 1, 20202024)**

A temporary court of appeals is established to exercise appellate and original jurisdiction as delegated by the supreme court. Panels of the temporary court of appeals may issue original and remedial writs necessary to properly exercise jurisdiction in cases assigned to them. The panels of the temporary court of appeals are subject to administration by the supreme court pursuant to sections 3 and 8 of article VI of the Constitution of North Dakota.

**SECTION 6. AMENDMENT.** Section 27-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-02. Number, assignment, and compensation of judges. (Effective through January 1, 20202024)**

1. The supreme court may provide for the assignment of active or retired district court judges, retired justices of the supreme court, and lawyers, to serve on three-judge panels of the temporary court of appeals if the chief justice certifies to the governor that the supreme court has disposed of two hundred fifty cases in the twelve months preceding September first of any year. Assignments may be made for a time certain, not to exceed one year from the date of assignment, or specifically for one or more cases on the docket of the supreme court.
2. An active or retired district court judge serving on the temporary court of appeals may not be assigned to hear cases in which the judge participated while serving on the district court. An active district court judge may not be assigned to hear cases that originated in the judicial district of the judge.
3. An active district court judge serving on the temporary court of appeals is not entitled to additional compensation, but is entitled to reimbursement for expenses as provided by sections 44-08-04 and 54-06-09.
4. Retired justices of the supreme court, retired district court judges, and lawyers serving as judges on panels of the temporary court of appeals are entitled to receive as compensation for each day of service in the performance of duties pursuant to the assignment an amount equal to five percent of the gross monthly salary as provided for a regularly elected or appointed justice of the supreme court, or one-half of the daily compensation for services of one-half day or less. The compensation must be paid upon certification by the judge that the services were performed for the number of days shown on the certificate and must be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.

**SECTION 7. AMENDMENT.** Section 27-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-03. Assignment and reassignment of cases - Quorum for decision of cases - Authority in furtherance of jurisdiction. (Effective through January 1, 20202024)**

1. Panels of the temporary court of appeals have jurisdiction to hear and to decide all cases assigned by the supreme court.
2. The supreme court may order reassignment of any case from a panel of the temporary court of appeals to the supreme court.
3. A majority of the three judges of a panel of the temporary court of appeals hearing a case is necessary to pronounce a decision.
4. When a judgment or order is reversed, modified, or confirmed by a panel of the temporary court of appeals, the reasons must be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court, and preserved with the record of the case. Any judge concurring or dissenting may give the reasons for the judge's concurrence or dissent in writing over the judge's signature.

**SECTION 8. AMENDMENT.** Section 27-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-04. Administration - Employees and clerical assistance - Court of record - Place of sessions. (Effective through January 1, 20202024)**

1. The clerk of the supreme court shall provide clerk services to panels of the temporary court of appeals.
2. Panels of the temporary court of appeals may hold court in any place the panel considers convenient and efficient for conducting its business.
3. All proceedings of the panels of the temporary court of appeals must be pursuant to the rules adopted by the supreme court.

**SECTION 9. AMENDMENT.** Section 27-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-05. Chief judge. (Effective through January 1, 20202024)**

The chief justice of the supreme court shall designate a chief judge of each panel of the temporary court of appeals who shall preside pursuant to rules of the supreme court.

**SECTION 10. AMENDMENT.** Section 27-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-06. Review of decisions of panels. (Effective through January 1, 20202024)**

Any party in interest who is aggrieved by a judgment or order of a panel of the temporary court of appeals may petition the supreme court for review of the judgment or order pursuant to rules of the supreme court. Upon the filing of a petition for review by the supreme court, the order or judgment and mandate of the panel of the

temporary court of appeals is stayed pending action of the supreme court. The supreme court has discretion to grant or deny the petition.

**SECTION 11. AMENDMENT.** Section 27-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-07. Right to appeal not created. (Effective through January 1, 20202024)**

This chapter does not provide or create a right of appeal if that right is not otherwise provided by law. An appeal assigned to a panel of the temporary court of appeals fulfills the right of appeal provided by section 28-27-02.

**SECTION 12. AMENDMENT.** Section 27-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-08. Unitary appeal - Filing of appeal - Filing fee. (Effective through January 1, 20202024)**

All appeals must be treated as one appeal process under the jurisdiction of the supreme court. In any appeal there may be only one filing and one filing fee required. The filing fee is as prescribed by section 27-03-05.

**SECTION 13. AMENDMENT.** Section 27-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-09. Publication of opinions. (Effective through January 1, 20202024)**

Opinions of the panels of the temporary court of appeals may be published pursuant to rules of the supreme court.

**SECTION 14. AMENDMENT.** Section 27-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**27-05-03. Salaries and expenses of district judges.**

The annual salary of each district judge is ~~one hundred thirty-nine thousand six hundred seventy-nine dollars through June 30, 2016~~ one hundred forty-six thousand two hundred sixty-nine dollars through June 30, 2020, and ~~one hundred forty-three thousand eight hundred sixty-nine~~ one hundred forty-nine thousand nine hundred twenty-six dollars thereafter. Each district judge is entitled to travel expenses, including mileage and subsistence while engaged in the discharge of official duties outside the city in which the judge's chambers are located. The salary and expenses are payable monthly in the manner provided by law. A presiding judge of a judicial district is entitled to receive an additional ~~four thousand thirty-five dollars per annum through June 30, 2016~~ four thousand one hundred fifty-six dollars per annum through June 30, 2020, and ~~four thousand one hundred fifty-six~~ four thousand two hundred sixty dollars thereafter.

**SECTION 15. APPROPRIATION.** There are appropriated any funds received by the supreme court, district courts, and judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants, and donations for the purpose as designated in the federal acts or private gifts, grants, and donations for the period beginning July 1, 2019, and ending June 30, 2021.

**SECTION 16. TRANSFERS.** The director of the office of management and budget shall transfer appropriation authority between line items in section 1 of this Act as

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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 17. LEGISLATIVE INTENT - NEW DISTRICT COURT JUDGES.** It is the intent of the sixty-sixth legislative assembly that the judicial branch consider the relocation of current district court judge positions prior to submitting a future request for any additional district court judge positions.

**SECTION 18. JUDICIAL BRANCH STUDY - DISTRICT COURT REPORTERS - REPORT.** During the 2019-20 interim, the judicial branch shall study the need for one full-time equivalent court reporter position for each district court judgeship. The judicial branch shall report the results of its study to the budget section by December 31, 2020.

**SECTION 19. EMERGENCY.** The \$970,000 appropriated from the capitol building fund in section 1 to remodel the law library space and section 3 of this Act are declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 3

### HOUSE BILL NO. 1003

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to create and enact a new chapter to title 15, two new sections to chapter 15-10, section 15-10-48.1, and a new section to chapter 15-18 of the North Dakota Century Code, relating to the midwestern higher education compact, the university of North Dakota men's golf program, the professional student exchange program, matching grants for the university of North Dakota school of law, and the Curtis and Annette Hofstad agricultural center; to amend and reenact sections 15-10-12.1, 15-10-48, 15-10-49, 15-10-50, 15-18.2-02, 15-18.2-05, 15-62.4-03, and 54-44.1-11 of the North Dakota Century Code, relating to acceptance of buildings and campus improvements, matching grants for institutions under the control of the state board of higher education, state aid to institutions, the student financial assistance grant program, and the cancellation of unexpended appropriations; to repeal sections 15-10-37 and 15-10-61 of the North Dakota Century Code, relating to the technology occupations student loan program and the dual-credit instructor assistance program; to authorize the industrial commission to issue and sell evidences of indebtedness for capital projects; to authorize the state board of higher education to issue and sell bonds for capital projects; to provide for a transfer; to provide for the conveyance of real property; to provide for a legislative management study; to provide for reports; to provide for 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 state board of higher education and to the entities and institutions under the supervision of the board, for the purpose of defraying the expenses of the state board of higher education and the entities and institutions under the control of the board, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

Subdivision 1.

**NORTH DAKOTA UNIVERSITY SYSTEM OFFICE**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Capital assets - bond payments	\$6,605,326	(\$1,645,878)	\$4,959,448
Competitive research programs	6,027,750	(342,000)	5,685,750
NASA EPSCoR	0	342,000	342,000
System governance	8,163,238	574,629	8,737,867
Title II	1,006,472	(1,006,472)	0
Core technology services	61,527,347	758,781	62,286,128
Student financial assistance grants	21,917,306	2,000,000	23,917,306
Professional student exchange	3,699,342	0	3,699,342

program			
Academic and technical education scholarships	12,016,749	0	12,016,749
Scholars program	1,807,115	0	1,807,115
Native American scholarship	555,323	0	555,323
Tribally controlled community college grants	600,000	400,000	1,000,000
Education incentive programs	2,863,393	(2,353,393)	510,000
Student mental health	284,400	0	284,400
Veterans' assistance grants	277,875	0	277,875
Shared campus services	500,000	0	500,000
Dual-credit instructor assistance	200,000	(200,000)	0
Education challenge fund	0	9,400,000	9,400,000
Tier III capital building fund pool	0	9,000,000	9,000,000
Total all funds	\$128,051,636	\$16,927,667	\$144,979,303
Less estimated income	<u>26,412,106</u>	<u>4,590,100</u>	<u>31,002,206</u>
Total general fund	\$101,639,530	\$12,337,567	\$113,977,097
Full-time equivalent positions	149.40	(0.50)	148.90

## Subdivision 2.

## BISMARCK STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$101,670,034	(\$2,926,352)	\$98,743,682
Capital assets	1,922,561	0	1,922,561
Capital building fund	0	851,386	851,386
Total all funds	\$103,592,595	(\$2,074,966)	\$101,517,629
Less estimated income	<u>72,991,998</u>	<u>(2,542,596)</u>	<u>70,449,402</u>
Total general fund	\$30,600,597	\$467,630	\$31,068,227
Full-time equivalent positions	358.35	(34.42)	323.93

## Subdivision 3.

## LAKE REGION STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$36,449,048	\$1,110,079	\$37,559,127
Capital assets	362,667	3,000,000	3,362,667
Capital building fund	0	354,750	354,750
Total all funds	\$36,811,715	\$4,464,829	\$41,276,544
Less estimated income	<u>24,111,092</u>	<u>4,220,172</u>	<u>28,331,264</u>
Total general fund	\$12,700,623	\$244,657	\$12,945,280
Full-time equivalent positions	129.61	(11.51)	118.10

## Subdivision 4.

## WILLISTON STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$26,954,133	\$5,641,927	\$32,596,060
Capital assets	1,261,968	0	1,261,968
Capital building fund	0	275,894	275,894
Total all funds	\$28,216,101	\$5,917,821	\$34,133,922

Less estimated income	<u>19,855,598</u>	<u>4,210,581</u>	<u>24,066,179</u>
Total general fund	<u>\$8,360,503</u>	<u>\$1,707,240</u>	<u>\$10,067,743</u>
Full-time equivalent positions	100.75	(0.27)	100.48

## Subdivision 5.

## UNIVERSITY OF NORTH DAKOTA

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$864,554,974	\$26,999,006	\$891,553,980
Capital assets	4,411,566	145,000,000	149,411,566
Capital building fund	0	8,723,602	8,723,602
Total all funds	<u>\$868,966,540</u>	<u>\$180,722,608</u>	<u>\$1,049,689,148</u>
Less estimated income	<u>728,870,450</u>	<u>170,538,829</u>	<u>899,409,279</u>
Total general fund	<u>\$140,096,090</u>	<u>\$10,183,779</u>	<u>\$150,279,869</u>
Full-time equivalent positions	2,218.07	(85.90)	2,132.17

## Subdivision 6.

## NORTH DAKOTA STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$732,673,267	\$12,602,304	\$745,275,571
Capital assets	7,799,104	79,800,000	87,599,104
Capital building fund	0	5,799,192	5,799,192
Total all funds	<u>\$740,472,371</u>	<u>\$98,201,496</u>	<u>\$838,673,867</u>
Less estimated income	<u>611,881,329</u>	<u>94,077,555</u>	<u>705,958,884</u>
Total general fund	<u>\$128,591,042</u>	<u>\$4,123,941</u>	<u>\$132,714,983</u>
Full-time equivalent positions	1,895.66	(25.50)	1,870.16

## Subdivision 7.

## NORTH DAKOTA STATE COLLEGE OF SCIENCE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$91,682,610	\$4,042,801	\$95,725,411
Capital assets	1,012,379	0	1,012,379
Capital building fund	0	1,001,390	1,001,390
Total all funds	<u>\$92,694,989</u>	<u>\$5,044,191</u>	<u>\$97,739,180</u>
Less estimated income	<u>57,605,613</u>	<u>3,591,545</u>	<u>61,197,158</u>
Total general fund	<u>\$35,089,376</u>	<u>\$1,452,646</u>	<u>\$36,542,022</u>
Full-time equivalent positions	345.04	(34.31)	310.73

## Subdivision 8.

## DICKINSON STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$47,135,592	\$1,425,402	\$48,560,994
Capital assets	409,078	0	409,078
Capital building fund	0	537,724	537,724
Theodore Roosevelt digitization	0	200,000	200,000
Total all funds	<u>\$47,544,670</u>	<u>\$2,163,126</u>	<u>\$49,707,796</u>

Less estimated income	<u>29,737,827</u>	<u>1,376,906</u>	<u>31,114,733</u>
Total general fund	\$17,806,843	\$786,220	\$18,593,063
Full-time equivalent positions	168.90	44.36	213.26

Subdivision 9.

#### MAYVILLE STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$44,197,761	\$3,521,794	\$47,719,555
Capital assets	358,992	0	358,992
Capital building fund	0	<u>480,058</u>	<u>480,058</u>
Total all funds	\$44,556,753	\$4,001,852	\$48,558,605
Less estimated income	<u>30,307,148</u>	<u>1,830,841</u>	<u>32,137,989</u>
Total general fund	\$14,249,605	\$2,171,011	\$16,420,616
Full-time equivalent positions	210.53	(1.26)	209.27

Subdivision 10.

#### MINOT STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$100,710,275	\$1,614,798	\$102,325,073
Capital assets	1,099,620	0	1,099,620
Capital building fund	0	<u>1,145,602</u>	<u>1,145,602</u>
Total all funds	\$101,809,895	\$2,760,400	\$104,570,295
Less estimated income	<u>62,058,916</u>	<u>2,614,686</u>	<u>64,673,602</u>
Total general fund	\$39,750,979	\$145,714	\$39,896,693
Full-time equivalent positions	441.65	(34.07)	407.58

Subdivision 11.

#### VALLEY CITY STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$48,444,336	(\$267,408)	\$48,176,928
Capital assets	455,823	0	455,823
Capital building fund	0	<u>618,274</u>	<u>618,274</u>
Total all funds	\$48,900,159	\$350,866	\$49,251,025
Less estimated income	<u>28,470,657</u>	<u>(1,878,565)</u>	<u>26,592,092</u>
Total general fund	\$20,429,502	\$2,229,431	\$22,658,933
Full-time equivalent positions	202.75	(22.07)	180.68

Subdivision 12.

#### DAKOTA COLLEGE AT BOTTINEAU

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$17,168,111	\$4,272,495	\$21,440,606
Capital assets	114,007	2,500,000	2,614,007
Capital building fund	0	<u>212,128</u>	<u>212,128</u>
Total all funds	\$17,282,118	\$6,984,623	\$24,266,741
Less estimated income	<u>9,629,173</u>	<u>6,896,742</u>	<u>16,525,915</u>



Total general fund	\$7,652,945	\$87,881	\$7,740,826
Full-time equivalent positions	84.30	(2.01)	82.29

## Subdivision 13.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF  
MEDICINE AND HEALTH SCIENCES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$205,926,712	\$5,369,938	\$211,296,650
Health care workforce initiative	0	10,676,150	10,676,150
Total all funds	\$205,926,712	\$16,046,088	\$221,972,800
Less estimated income	<u>154,078,620</u>	<u>4,958,391</u>	<u>159,037,011</u>
Total general fund	\$51,848,092	\$11,087,697	\$62,935,789
Full-time equivalent positions	435.75	49.57	485.32

## Subdivision 14.

## NORTH DAKOTA FOREST SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$14,958,447	\$264,889	\$15,223,336
Capital assets	<u>118,728</u>	0	<u>118,728</u>
Total all funds	\$15,077,175	\$264,889	\$15,342,064
Less estimated income	<u>10,650,748</u>	<u>14,652</u>	<u>10,665,400</u>
Total general fund	\$4,426,427	\$250,237	\$4,676,664
Full-time equivalent positions	27.00	0.00	27.00

## Subdivision 15.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$613,242,154	\$47,275,651	\$660,517,805
Grand total special funds	<u>1,866,661,275</u>	<u>294,499,839</u>	<u>2,161,161,114</u>
Grand total all funds	\$2,479,903,429	\$341,775,490	\$2,821,678,919

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Capital projects - other funds	\$168,505,000	\$230,300,000
Education challenge grants	2,000,000	9,400,000
School of law matching grants	0	250,000
Tier II and tier III capital building funds	0	29,000,000
Theodore Roosevelt digitization	0	200,000
University of North Dakota campus network upgrades	0	1,500,000
North Dakota state university campus network upgrades	0	1,500,000
Institution operations distributions	2,000,000	0

Dickinson state university operations and debt repayment	8,284,626	0
Two-year campus study	40,000	0
Valley City state university integrated carbon project	22,500,000	0
Minot state university projects	2,284,000	0
Midwestern higher education compact dues	<u>230,000</u>	<u>0</u>
Total all funds	\$205,843,626	\$272,150,000
Total other funds	193,289,000	260,300,000
Total general fund	\$12,554,626	\$11,850,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The institutions and entities under the control of the state board of higher education shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. APPROPRIATION - 2017-19 BIENNIUM - WILLISTON STATE COLLEGE.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$491,850, or so much of the sum as may be necessary, to Williston state college for institution operations, for the period beginning with the effective date of this Act, and ending June 30, 2019. In accordance with section 54-44.1-11, any unexpended funds from this appropriation may be continued into the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. APPROPRIATION - 2017-19 BIENNIUM - DICKINSON STATE UNIVERSITY.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$550,000, or so much of the sum as may be necessary, to Dickinson state university for the digitization of documents at the Theodore Roosevelt center, for the period beginning with the effective date of this Act, and ending June 30, 2019. In accordance with section 54-44.1-11, any unexpended funds from this appropriation may be continued into the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. APPROPRIATION - 2017-19 BIENNIUM - STATE BOARD OF HIGHER EDUCATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,700,000, or so much of the sum as may be necessary, to the state board of higher education for campus workforce initiative projects, including \$1,000,000 for the Bismarck state college polytechnic transition, \$1,000,000 for the Dickinson state university dual-mission transition, and \$700,000 for Williston state college, for the period beginning with the effective date of this Act, and ending June 30, 2019. In accordance with section 54-44.1-11, any unexpended funds from this appropriation may be continued into the biennium beginning July 1, 2019, and ending June 30, 2021.

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

**Midwestern regional higher education compact.**

The midwestern regional higher education compact is adopted as follows:

**ARTICLE I - PURPOSE**

The purpose of the midwestern higher education compact is to provide greater higher education opportunities and services in the midwestern region, with the aim of furthering regional access to, research in, and choice of higher education for the citizens residing in the states that are parties to this compact.

## **ARTICLE II - THE COMMISSION**

1. The compacting states create the midwestern higher education commission, hereinafter called the commission. The commission is a body corporate of each compacting state. The commission has all the responsibilities, powers, and duties set forth in this chapter, including the power to sue and be sued, and any additional powers conferred upon it by subsequent action of the respective legislative assemblies of the compacting states in accordance with the terms of this compact.
2. The commission consists of the following five resident members from each state: the governor or the governor's designee who serves during the tenure of office of the governor; two legislators, one from each house, except for Nebraska, which may appoint two legislators from its legislative assembly, who serve two-year terms and are appointed by the appropriate appointing authority in each house of the legislative assembly; and two other at large members, at least one of whom is to be selected from the field of higher education. The at large members are to be appointed as provided by the laws of the appointing state. One of the two at large members initially appointed in each state serves a two-year term. The other, and any regularly appointed successor to either at large member, serves a four-year term. All vacancies are to be filled in accordance with the laws of the appointing states. Any commissioner appointed to fill a vacancy serves until the end of the incomplete term.
3. The commission shall select annually, from among its members, a chairman, a vice chairman, and a treasurer.
4. The commission shall appoint an executive director who serves at its pleasure and who is secretary to the commission. The treasurer, the executive director, and other personnel as the commission determines must be bonded in the amounts required by the commission.
5. The commission shall meet at least once each calendar year. The chairman may call additional meetings and upon the request of a majority of the commission members of three or more compacting states, shall call additional meetings. The commission shall give public notice of all meetings. All meetings must be open to the public.
6. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the commission.

## **ARTICLE III - POWERS AND DUTIES OF THE COMMISSION**

1. The commission shall adopt bylaws governing its management and operations.
2. Notwithstanding the laws of any compacting state, the commission shall provide for the personnel policies and programs of the compact in its bylaws.
3. The commission shall submit a budget to the governor and legislative assembly of each compacting state at the time and for the period required by each state. The budget must contain recommendations regarding the amount to be appropriated by each compacting state.

4. The commission shall report annually to the legislative assemblies and governors of the compacting states, to the midwestern governors' conference, and to the midwestern legislative conference of the council of state governments regarding the activities of the commission during the preceding year. The reports must include any recommendations that have been adopted by the commission.
5. The commission may borrow, accept, or contract for the services of personnel from any state or from the United States, or from any subdivision or agency thereof, from any interstate agency, or from any person.
6. The commission may accept for any of its purposes and functions under the compact donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or from any subdivision or agency thereof, from an interstate agency, or from any person, and may receive, use, and dispose of the same.
7. The commission may enter agreements with any other interstate education organization or agency, with institutions of higher education located in nonmember states, and with any of the various states to provide adequate programs and services in higher education for the citizens of the respective compacting states. After negotiations with interested institutions and interstate organizations or agencies, the commission shall determine the cost of providing the programs and services in higher education for use in these agreements.
8. The commission may establish and maintain offices in one or more of the compacting states.
9. The commission may establish committees and hire staff as necessary to carry out its functions.
10. The commission may provide for actual and necessary expenses for the attendance of its members at official meetings of the commission or of its designated committees.

#### **ARTICLE IV - ACTIVITIES OF THE COMMISSION**

1. The commission shall collect data on the long-range effects of the compact on higher education. By the end of the fourth year from the effective date of the compact and every two years thereafter, the commission shall review its accomplishments and make recommendations to the governors and legislative assemblies of the compacting states regarding continuance of the compact.
2. The commission shall study higher education issues that are of particular concern to the midwestern region. The commission also shall study the need for higher education programs and services in the compacting states and the resources for meeting those needs. The commission shall prepare reports, on its research, for presentation to the governors and legislative assemblies of the compacting states, as well as to other interested parties. In conducting the studies, the commission may confer with any national or regional planning body. The commission may draft and recommend to the governors and legislative assemblies of the various compacting states suggested legislation addressing issues in higher education.

3. The commission shall study the need for the provision of adequate programs and services in higher education, such as undergraduate, graduate, or professional student exchanges in the region. If a need for exchange in a field is apparent, the commission may enter agreements with any institution of higher education and with any compacting state to provide programs and services in higher education for the citizens of the respective compacting states. After negotiating with interested institutions and the compacting states, the commission shall determine the cost of providing the programs and services in higher education for use in its agreements. The contracting states shall contribute funds not otherwise provided, as determined by the commission, to carry out the agreements. The commission may also serve as the administrative and fiscal agent in carrying out agreements for higher education programs and services.
4. The commission shall serve as a clearinghouse for information regarding higher education activities among institutions and agencies.
5. The commission may provide services and research in any other area of regional concern.

#### **ARTICLE V - FINANCE**

1. The compacting states will appropriate the amount necessary to finance the general operations of the commission, not otherwise provided for, when authorized by their respective legislative assemblies. The amount must be apportioned equally among the compacting states.
2. The commission may not incur any obligations prior to the passage of appropriations adequate to meet the same; nor may the commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.
3. The commission shall keep accurate accounts of its receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements handled by the commission must be audited yearly by a certified or licensed public accountant and the report of the audit must be included in and become part of the annual report of the commission.
4. The accounts of the commission must be open at any reasonable time for inspection by duly authorized representatives of the compacting states and by persons authorized by the commission.

#### **ARTICLE VI - ELIGIBLE PARTIES AND ENTRY INTO FORCE**

1. The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin are eligible to become parties to this compact. Additional states may be eligible if approved by a majority of the compacting states.
2. This compact becomes effective, as to any eligible party state, when its legislative assembly enacts the compact into law.
3. An amendment to the compact becomes effective upon its enactment by the legislative assemblies of all compacting states.

## **ARTICLE VII - WITHDRAWAL, DEFAULT, AND TERMINATION**

1. A compacting state may withdraw from the compact by enacting a statute repealing the compact, but the withdrawal may not become effective until two years after the enactment of such statute. A withdrawing state is liable for any obligation that it incurred on account of its party status, up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it remains liable to the extent of the obligation.
2. If a compacting state at any time defaults in the performance of its obligations, assumed or imposed, in accordance with this compact, all rights, privileges, and benefits conferred by this compact or by agreements made under the compact are suspended from the effective date of the default, as fixed by the commission. 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, the compact may be terminated with respect to the defaulting state by affirmative vote of a majority of the other member states. A defaulting state may be reinstated by performing all acts and obligations required by the commission.

## **ARTICLE VIII - SEVERABILITY AND CONSTRUCTION**

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 compacting state or of the United States or its applicability to any person or circumstance is held invalid, the validity of the remainder of the compact and its applicability to any person or circumstance may not be affected. If the compact is found to be contrary to the constitution of any compacting state, the compact remains in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of the compact must be liberally construed to effectuate the purpose of the compact.

### **Midwestern higher education commission - Terms - Vacancies.**

1. The members of the midwestern higher education commission representing this state are:
  - a. The governor or the governor's designee.
  - b. One member of the senate and one member of the house of representatives, appointed by the chairman of the legislative management.
  - c. Two at-large members, one of whom must be knowledgeable about the field of higher education, appointed by the governor.
2. The term of each legislative appointee is two years. One initial at-large member must be appointed for a term of two years and the other for a term of four years. Thereafter, the term of each at-large member is four years.
3. If a member vacates the position to which the member was appointed, the position must be filled for the remainder of the unexpired term in the same manner as that position was filled initially.

**SECTION 7. AMENDMENT.** Section 15-10-12.1 of 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 authorize campus improvements and building maintenance on land under the control of the board which are financed by donations, gifts, grants, and bequests if the cost of the improvement or building maintenance is not more than seven hundred thousand dollars. The consent of the legislative assembly is required for construction of any building or any addition to a building on land under the control of the board which is financed by donations, gifts, grants, and bequests. The consent of the legislative assembly is required for campus improvements or building maintenance financed by donations, gifts, grants, and bequests if the cost of the improvements or maintenance is more than seven hundred 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 the three months following the close 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 management, may authorize the use of land under the control of the board and construct buildings financed by donations, gifts, grants, and bequests and campus improvements and building maintenance financed by donations, gifts, grants, and bequests if the cost of the improvement or maintenance is more than seven hundred thousand dollars. Any project request submitted to the budget section for the construction of a building financed by donations, gifts, grants, and bequests must include the removal of a building or buildings with an equivalent or greater total number of square feet compared to the proposed building. The budget section approval must include a specific dollar limit for each building, campus improvement project, or maintenance project. The state board of higher education may authorize the sale of any real property or buildings which an institution of higher learning has received by gift or bequest. The board shall prescribe such conditions for the sale of the property as it determines necessary. The conditions must include requiring an appraisal and 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 or 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.

<sup>1</sup> **SECTION 8. AMENDMENT.** Section 15-10-48 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-48. Advancement of academics - Matching grants - University of North Dakota and North Dakota state university.**

1. a. Subject to legislative appropriations, each biennium during the period beginning July first of each odd-numbered year and ending December thirty-first of each even-numbered year, the state board of higher education shall award one dollar in matching grants for every two dollars raised by the institutional foundations of the university of North Dakota and

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<sup>1</sup> Section 15-10-12.1 was also amended by section 2 of Senate Bill No. 2055, chapter 438.

North Dakota state university for projects dedicated exclusively to the advancement of academics.

- b. To be eligible for a matching grant, an institution must demonstrate that:
    - (1) Its foundation has raised at least fifty thousand dollars in cash or monetary pledges for a qualifying project; and
    - (2) The project has been approved by the grant review committee established in section 15-10-51.
  - c. ~~The board may award up to two hundred thousand~~ one million seven hundred thousand dollars in matching grants to each institution.
  - d. Projects at the university of North Dakota school of medicine and health sciences are not eligible to receive a grant under this section.
2. a. If any available dollars have not been awarded by the board before January first of each odd-numbered year, in accordance with subsection 1, either the university of North Dakota or North Dakota state university may apply for an additional matching grant.
    - b. An application submitted under this subsection must meet the same criteria as an original application.
    - c. The board shall consider each application submitted under this subsection in chronological order.
    - d. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.
  3. The state board of higher education shall retain up to one-quarter of one percent of any grant awarded under this section to assist with administrative expenses incurred in the grant review process.

**SECTION 9.** Section 15-10-48.1 of the North Dakota Century Code is created and enacted as follows:

**15-10-48.1. Clinical legal education, including indigent legal services, and faculty recruitment and retention - Matching grants - University of North Dakota school of law.**

1. a. Subject to legislative appropriations, each biennium the state board of higher education shall award one dollar in matching grants for every two dollars raised by the institutional foundation of the university of North Dakota for projects dedicated exclusively to clinical legal education, including indigent legal services, or the recruitment and retention of faculty at the school of law.
  - b. To be eligible for a matching grant, the institution shall demonstrate:
    - (1) Its foundation has raised at least twenty-five thousand dollars in cash or monetary pledges for a qualifying project; and



- (2) The project has been approved by the grant review committee established in section 15-10-51.
- c. The board may award up to two hundred fifty thousand dollars in matching grants under this section.
- d. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.
2. The state board of higher education shall retain up to one-quarter of one percent of any grant awarded under this section to assist with the administrative expenses incurred in the grant review process.

**SECTION 10. AMENDMENT.** Section 15-10-49 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-49. Advancement of academics - Matching grants - Two-year and four-year institutions of higher education.**

1. a. Subject to legislative appropriations, each biennium during the period beginning July first of each odd-numbered year and ending December thirty-first of each even-numbered year, the state board of higher education shall award one dollar in matching grants for every two dollars raised by the institutional foundations of Bismarck state college, Dakota college at Bottineau, Dickinson state university, Lake Region state college, Mayville state university, Minot state university, North Dakota state college of science, Valley City state university, and Williston state college for projects dedicated exclusively to the advancement of academics.
- b. To be eligible for a matching grant, an institution must demonstrate that:
- (1) Its foundation has raised at least twenty-five thousand dollars in cash or monetary pledges for a qualifying project; and
- (2) The project has been approved by the grant review committee established in section 15-10-51.
- c. ~~The board may award up to two hundred thousand dollars in matching grants to each institution.:~~
- (1) Nine hundred fifty thousand dollars each to Bismarck state college, Minot state university, and the North Dakota state college of science;
- (2) Seven hundred thousand dollars each to Dickinson state university, Mayville state university, and Valley City state university; and
- (3) Three hundred fifty thousand dollars each to Dakota college at Bottineau, Lake Region state college, and Williston state college.
2. a. If any available dollars have not been awarded by the board before January first of each odd-numbered year, in accordance with subsection 1, any institution listed in subsection 1 may apply for an additional matching grant.

- b. An application submitted under this subsection must meet the same criteria as an original application.
  - c. The board shall consider each application submitted under this subsection in chronological order.
  - d. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.
3. The state board of higher education shall retain up to one-quarter of one percent of any grant awarded under this section to assist with administrative expenses incurred in the grant review process.

**SECTION 11. AMENDMENT.** Section 15-10-50 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-50. Liability for pledged amount.**

If in accordance with section 15-10-48, 15-10-48.1, or 15-10-49, the state board of higher education provides grant funds to an institution, on the basis of a monetary pledge, and if the amount forthcoming is less than the amount pledged, the institutional foundation is liable to the institution for any shortfall.

**SECTION 12.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Professional student exchange programs - Bank of North Dakota - Agreements - Repayment.**

1. The state board of higher education may not make a payment to an out-of-state institution on behalf of an individual participating in a professional student exchange program in veterinary medicine, dentistry, or optometry unless that individual signed a legally binding agreement with the state board of higher education which identifies the amount of the award under the professional student exchange program.
2. If the individual who signed the agreement under subsection 1 is not practicing veterinary medicine, dentistry, or optometry in this state within thirty-six months following graduation or of leaving the education program, the individual shall repay the amount of the agreement in full at that time.
3. If the individual who signed the agreement under subsection 1 practices veterinary medicine, dentistry, or optometry in this state within thirty-six months following graduation, the state board of higher education shall reduce the amount of the agreement by one-third, for each full year the individual continues practicing in the state. If the individual stops practicing in this state before the amount of the agreement is waived in its entirety, the individual shall repay the remaining portion of the agreement in full from the date the individual stopped practicing in the state.
4. If the individual who signed the agreement under subsection 1 departs before graduation from a program in dentistry or optometry, at the time of departure that individual shall repay the amount of the agreement in full.

5. The Bank of North Dakota shall allow an individual who is required to repay all or a portion of an agreement under this section to utilize one of the Bank's student loan programs as an option for repayment, up to the amount certified by the state board of higher education. To qualify under this subsection, the individual must meet student loan credit criteria as established by the Bank.
6. The state board of higher education shall defer any repayment of an agreement otherwise due under this section for the period of time the individual who signed the agreement is pursuing full-time graduate or postdoctoral studies or is called to active duty as a member of the armed forces. The repayment provisions under an agreement signed under this section must provide for cancellation of the repayment requirements if the individual dies or becomes permanently or totally disabled.
7. The state board of higher education shall adopt policies and procedures implementing this section. The state board of higher education shall confirm eligibility to the Bank, of any individual who uses the Bank's student loan program to repay any outstanding agreement amounts in full.

**SECTION 13.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**University of North Dakota men's varsity golf program.**

If certain real property known as the Ray Richards golf course or Ray Richards golf course addition, 3801 demers avenue, lot 1, block 1, and Ray Richards golf course addition, 3501 demers avenue, lot 2, block 1, in the records of the city of Grand Forks, or any portion of the property, is conveyed, fifty-three and fifty-seven one hundredths percent of the sale price must be transferred to a permanent endowment fund named the Ray Richards golf endowment fund, which must be controlled and administered by the university of North Dakota alumni foundation for the sole benefit of the university of North Dakota men's varsity golf program in honor of the Ray Richards family. If the university of North Dakota men's varsity golf program has been terminated prior to the conveyance, so much of the funds in the Ray Richards golf endowment fund as necessary must be used to reinstate the program, and the remainder must be used for the sole benefit of the program.

**SECTION 14.** A new section to chapter 15-18 of the North Dakota Century Code is created and enacted as follows:

**Curtis and Annette Hofstad agricultural center.**

The agricultural center constructed on the campus of Lake Region state college is officially named the Curtis and Annette Hofstad agricultural center.

**SECTION 15. AMENDMENT.** Section 15-18.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-18.2-02. Weighted credit-hours - Determination - Instructional program classification factors - Submission to legislative management.**

1. In order to determine the weighted credit-hours for each institution under its control, the state board of higher education shall multiply each of an institution's completed credit-hours, as determined under section 15-18.2-01, by an instructional program classification factor, as set forth in this section.
  - a. The factors for credits completed in agriculture are:

- 
- (1) 1.9 for lower division credits;
  - (2) 3.8 for upper division credits;
  - (3) 5.7 for professional level credits; and
  - (4) 7.6 for graduate level credits.
- b. The factors for credits completed in architecture are:
- (1) 1.8 for lower division credits;
  - (2) 3.6 for upper division credits;
  - (3) 5.4 for professional level credits; and
  - (4) 7.2 for graduate level credits.
- c. The factors for credits completed in transportation are:
- (1) 1.9 for lower division credits;
  - (2) 3.8 for upper division credits;
  - (3) 5.7 for professional level credits; and
  - (4) 7.6 for graduate level credits.
- d. The factors for credits completed in the biological and physical sciences are:
- (1) 1.9 for lower division credits;
  - (2) 3.8 for upper division credits;
  - (3) 5.7 for professional level credits; and
  - (4) 7.6 for graduate level credits.
- e. The factors for credits completed in business are:
- (1) 1.9 for lower division credits;
  - (2) 3.8 for upper division credits;
  - (3) 5.7 for professional level credits; and
  - (4) 7.6 for graduate level credits.
- f. The factors for credits completed in education are:
- (1) 1.9 for lower division credits;
  - (2) 3.8 for upper division credits;
  - (3) 5.7 for professional level credits; and

- (4) 7.6 for graduate level credits.
  - g. The factors for credits completed in engineering are:
    - (1) 2.5 for lower division credits;
    - (2) 5.0 for upper division credits;
    - (3) 7.5 for professional level credits; and
    - (4) 10.0 for graduate level credits.
  - h. The factors for credits completed in the health sciences are:
    - (1) 3.0 for lower division credits;
    - (2) 6.0 for upper division credits;
    - (3) 9.0 for professional level credits;
    - (4) 12.0 for graduate level credits; and
    - (5) ~~38-034.5~~ 14.5 for medical school credits.
  - i. The factors for credits completed in legal studies are:
    - (1) 3.5 for lower division credits;
    - (2) 7.0 for upper division credits;
    - (3) ~~40-514.0~~ 14.0 for professional level credits; and
    - (4) 14.0 for graduate level credits.
  - j. The factors for credits completed in the core disciplines are:
    - (1) 1.0 for lower division credits;
    - (2) 2.0 for upper division credits;
    - (3) 3.0 for professional level credits; and
    - (4) 4.0 for graduate level credits.
  - k. The factor for credits completed in career and technical education is 2.0.
  - l. The factor for completed basic skills credits is 2.3.
2. a. The state board of higher education shall ensure that all delineations in this section reflect the requirements of a nationally recognized and standardized instructional program classification system.
- b. Before adopting any changes to the delineations implemented in accordance with this section, the state board of higher education shall present the proposed changes to and receive the approval of the legislative management.

**SECTION 16. AMENDMENT.** Section 15-18.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-18.2-05. Base funding - Determination of state aid.**

1. Except as provided under subsection 2, in order to determine the state aid payment to which each institution under its control is entitled, the state board of higher education shall multiply the product determined under section 15-18.2-04 by a base amount of:
  - a. ~~\$58.65~~\$60.87 in the case of North Dakota state university and the university of North Dakota;
  - b. ~~\$86.95~~\$90.98 in the case of Dickinson state university, Mayville state university, Minot state university, and Valley City state university; and
  - c. ~~\$93.03~~\$97.06 in the case of Bismarck state college, Dakota college at Bottineau, Lake Region state college, North Dakota state college of science, and Williston state college.
2. An institution is entitled to an amount equal to seventy-five percent of the product determined under subsection 1 for credits completed by students receiving a tuition waiver pursuant to section 54-12-35.

**SECTION 17. AMENDMENT.** Section 15-62.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.4-03. Student financial assistance program - Grants.**

1. The state board of higher education shall provide to each eligible student a financial assistance grant in an amount not exceeding:
  - a. ~~Nine hundred seventy-five~~One thousand one hundred dollars per semester; or
  - b. ~~Six hundred fifty~~Seven hundred thirty-three dollars per quarter.
2. a. A student is not entitled to receive grants under this chapter for more than the equivalent of:
  - (1) Eight semesters of full-time enrollment; or
  - (2) Twelve quarters of full-time enrollment.
- b. Notwithstanding subdivision a, a student is not entitled to receive a grant under this chapter after the student obtains a baccalaureate degree.
3. The board shall forward grants payable under this chapter directly to the institution in which the student is enrolled.

**SECTION 18. 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. (Effective through July 31, ~~2019~~2021)**

Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

**Office of management and budget to cancel unexpended appropriations - When they may continue. (Effective after July 31, 2019-2021)** The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.

4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

**SECTION 19. REPEAL.** Sections 15-10-37 and 15-10-61 of the North Dakota Century Code are repealed.

**SECTION 20. ADDITIONAL FEDERAL, PRIVATE, AND OTHER FUNDS - APPROPRIATION.** All funds, in addition to those appropriated in section 1 of this Act, from federal, private, and other sources for competitive grants or other funds that the legislative assembly has not indicated the intent to reject, including tuition revenue, received by the state board of higher education and the institutions and entities under the control of the state board of higher education, are appropriated to the board and those institutions and entities, for the biennium beginning July 1, 2019, and ending June 30, 2021. All additional funds received under the North Dakota-Minnesota reciprocity agreement during the biennium beginning July 1, 2019, and ending June 30, 2021, are appropriated to the state board of higher education for reimbursement to institutions under the control of the board.

**SECTION 21. CAMPUS CAPITAL PROJECTS - PROJECT MANAGEMENT.** During the period beginning with the effective date of this Act, and ending June 30, 2021, each capital project authorized by the state board of higher education must have adequate project management oversight by either an institution official or a representative of an external entity. An institution may seek assistance from the North Dakota university system office for project management oversight of a capital project.

**SECTION 22. UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES OPERATIONS.** The operations line item in subdivision 5 of section 1 of this Act includes a funding allocation from the higher education per student credit-hour funding formula attributable to inflation during the biennium beginning July 1, 2019, and ending June 30, 2021. Based on the recommendation of the commissioner of higher education a portion of the allocation may be transferred by the state board of higher education between the university of North Dakota school of medicine and health sciences and the university of North Dakota.

**SECTION 23. TRANSFER AUTHORITY - LEGISLATIVE MANAGEMENT REPORT.** Notwithstanding section 54-16-04, the state board of higher education may transfer appropriation authority from the operations to the capital assets and capital building fund line items within subdivisions 2 through 14 of section 1 of this Act for the period beginning with the effective date of this Act, and ending June 30, 2021. The board shall report any transfer of funds under this section to the office of management and budget and the legislative management.

**SECTION 24. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS.** Notwithstanding any other provisions of law, the state board of higher education may adjust full-time equivalent positions as needed, subject to the availability of funds, for institutions and entities under its control during the biennium beginning July 1, 2019, and ending June 30, 2021. The North Dakota university system shall report any adjustments to the office of management and budget as part of the submission of the 2021-23 biennium budget request.



**SECTION 25. USE OF EXTRAORDINARY REPAIRS FUNDING - MATCHING FUNDS.** The capital assets line items in subdivisions 2 through 12 of section 1 of this Act include funding from the general fund for institution extraordinary repairs. An institution shall provide two dollars of matching funds from operations or other sources for each one dollar of extraordinary repairs funding used for a project. An institution may not use tier II or tier III capital building fund moneys as matching funds under this section.

**SECTION 26. SALE OF PROPERTY AUTHORIZED.** The state of North Dakota, by and through the state board of higher education, may sell and convey certain real property known as gallery apartments, lots 1, 2, and 3, block 13, university heights addition, and lots 1, 2, 3, 4, 5, and 6, block 1, university heights 2<sup>nd</sup> addition, in the records of the city of Grand Forks. The state of North Dakota, by and through the state board of higher education, may sell and convey certain real property located at 1225 stanford road, lots 1 and 2, block 5, university heights addition, in the records of the city of Grand Forks. If any of the real property authorized to be conveyed under this section is conveyed, the terms of the conveyance must be determined jointly by the state board of higher education or a designee of the board and the commissioner of university and school lands. Sections 54-01-05.2 and 54-01-05.5 do not apply to the transfers authorized by this section.

**SECTION 27. PROJECT AUTHORIZATIONS.** The industrial commission, acting as the North Dakota building authority, shall arrange for the funding of the projects authorized in this section, declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2, beginning with the effective date of this Act, and ending June 30, 2021. The industrial commission shall issue evidences of indebtedness under this section with the condition that lease rental payments need not begin until July 1, 2021. The authority of the industrial commission to issue evidences of indebtedness under this section ends June 30, 2021, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and comply with any covenants entered before that date. The proceeds of the evidences of indebtedness are included in the appropriation in subdivision 5 of section 1, beginning with the effective date of this Act, and ending June 30, 2021, for the following projects:

University of North Dakota - deferred maintenance and parking projects	<u>\$30,000,000</u>
Total special funds	\$30,000,000

The university of North Dakota is responsible for the repayment of any evidences of indebtedness issued under this section from institution operations funding or other local funds.

**SECTION 28. BOND ISSUANCE AUTHORIZATION - PURPOSES.** The state board of higher education, in accordance with chapter 15-55, may arrange for the funding of projects authorized in this section, declared to be in the public interest, through the issuance of self-liquidating, tax-exempt evidences of indebtedness under chapter 15-55, beginning with the effective date of this Act and ending June 30, 2021. Evidences of indebtedness issued pursuant to this section are not a general obligation of the state of North Dakota. Any unexpended balance resulting from the proceeds of the evidences of indebtedness must be placed in a sinking fund to be used for the retirement of indebtedness. The evidences of indebtedness may be issued and the proceeds are appropriated in section 1 of this Act for the following capital projects:

University of North Dakota - memorial union	\$80,000,000
North Dakota state university - university village phase II	37,600,000

Dakota college at Bottineau - dining facility	<u>2,500,000</u>
Total special funds	\$120,100,000

**SECTION 29. TRANSFER - BANK OF NORTH DAKOTA PROFITS - TIER II CAPITAL BUILDING FUNDS - MATCHING FUNDS.** The industrial commission shall transfer to institutions under the control of the state board of higher education a total of \$10,000,000, or so much of the sum as may be necessary, from the current earnings and accumulated undivided profits of the Bank of North Dakota during the period beginning with the effective date of this Act, and ending June 30, 2021, as requested by the commissioner of higher education. The capital building fund and estimated income line items in subdivisions 2 through 12 of section 1 of this Act include \$10,000,000 from the current earnings and accumulated undivided profits of the Bank of North Dakota as follows:

	<u>Bank of North Dakota</u>
Bismarck state college	\$425,693
Lake Region state college	177,375
Williston state college	137,947
University of North Dakota	4,361,801
North Dakota state university	2,899,596
North Dakota state college of science	500,695
Dickinson state university	268,862
Mayville state university	240,029
Minot state university	572,801
Valley City state university	309,137
Dakota college at Bottineau	<u>106,064</u>
Total	\$10,000,000

An institution shall provide one dollar of matching funds from operations or other sources for each one dollar from Bank of North Dakota profits deposited in each institution's capital building fund. An institution may not use extraordinary repairs funding or tier III capital building fund moneys as matching funds under this section.

**SECTION 30. TRANSFER - BANK OF NORTH DAKOTA PROFITS - TIER III CAPITAL BUILDING FUND POOL - MATCHING FUNDS.** The industrial commission shall transfer to the North Dakota university system office a total of \$7,000,000, or so much of the sum as may be necessary, from the current earnings and accumulated undivided profits of the Bank of North Dakota during the period beginning with the effective date of this Act, and ending June 30, 2021, as requested by the commissioner of higher education. The tier III capital building fund pool and estimated income line items in subdivision 1 of section 1 of this Act include \$7,000,000 from the current earnings and accumulated undivided profits of the Bank of North Dakota. The tier III capital building fund pool in subdivision 1 of section 1 of this Act also includes \$2,000,000 from the general fund. Funding from the tier III capital building fund pool is to be allocated to each institution as follows:

	<u>Tier III Capital Building Fund</u>
Bismarck state college	\$500,000
Lake Region state college	500,000
Williston state college	500,000
University of North Dakota	2,250,000
North Dakota state university	2,250,000
North Dakota state college of science	500,000
Dickinson state university	500,000
Mayville state university	500,000

Minot state university	500,000
Valley City state university	500,000
Dakota college at Bottineau	500,000
Total	\$9,000,000

An institution shall provide two dollars of matching funds from operations or other sources for each one dollar from the tier III capital building fund pool. An institution may not use extraordinary repairs funding or tier II capital building fund moneys as matching funds under this section. Any funds transferred to an institution pursuant to this section from the tier III capital building fund pool must be placed in that institution's capital building fund line item.

**SECTION 31. CAPITAL BUILDING FUNDS - USES - REPORTS.** After the institution has matched seventy-five percent of the funding appropriated from the general fund for institution extraordinary repairs pursuant to section 25 of this Act and subject to state board of higher education approval, each institution in subdivisions 2 through 12 of section 1 of this Act may use moneys from its capital building fund line item for extraordinary repairs and deferred maintenance projects which do not exceed \$700,000 and do not increase the square footage of a building. In addition, the following projects are authorized to use funding from the corresponding institution's capital building fund line item:

Lake Region state college - precision agriculture center	\$3,000,000
North Dakota state college of science - Hektner Student Center	6,708,000
Minot state university - dome wellness emergency generators	1,130,335
Valley City state university - life safety projects	2,529,323
Dakota college at Bottineau - Nelson Science Center	<u>1,177,758</u>
Total	\$14,545,416

The North Dakota university system shall report to the legislative management during the 2019-20 interim and to the appropriations committees of the sixty-seventh legislative assembly on the use of funding in each institutions' capital building fund line item, the source of matching funds, and each institutions' five-year plan for capital construction spending.

**SECTION 32. TRANSFER - BANK OF NORTH DAKOTA PROFITS - CAMPUS NETWORK UPGRADES.** The industrial commission shall transfer to the university of North Dakota a total of \$1,500,000, or so much of the sum as may be necessary, and to North Dakota state university a total of \$1,500,000, or so much of the sum as may be necessary, from the current earnings and accumulated undivided profits of the Bank of North Dakota during the biennium beginning July 1, 2019, and ending June 30, 2021, as requested by the commissioner of higher education. The estimated income line items in subdivisions 5 and 6 of section 1 include \$1,500,000 each for the university of North Dakota and North Dakota state university for campus network upgrades.

**SECTION 33. TUITION RATE INCREASE LIMITATION - BUDGET SECTION APPROVAL.**

1. Except as provided in this section, notwithstanding any other provision of law, the state board of higher education may not increase tuition rates for resident students attending institutions of higher education under its control during the 2019-20 academic year by more than four percent as compared to the tuition rate in effect during the 2019 spring semester unless the board receives prior budget section approval. Before approving or denying the request, the budget section shall consider the effect the tuition rate increase will have on current and prospective students, tuition rates at comparable institutions in

neighboring states, and the institution's planned use of additional tuition revenue.

2. Except as provided in this section, notwithstanding any other provision of law, the state board of higher education may not increase tuition rates for resident students attending institutions of higher education under its control during the 2020-21 academic year by more than four percent as compared to the tuition rate in effect during the 2020 spring semester unless the board receives prior budget section approval. Before approving or denying the request, the budget section shall consider the effect the tuition rate increase will have on current and prospective students, tuition rates at comparable institutions in neighboring states, and the institution's planned use of additional tuition revenue.
3. This section does not apply to tuition rates charged for graduate level programs, including programs offered through the university of North Dakota school of medicine and health sciences, the university of North Dakota school of law, or the North Dakota state university school of pharmacy.
4. This section does not apply to tuition rates for nonresident students attending institutions of higher education under the control of the state board of higher education. For purposes of this section, the residency of students for tuition purposes must be determined under section 15-10-19.1.
5. This section does not apply to tuition rates determined under tuition reciprocity agreements entered into by the state board of higher education with other states or state education compacts.
6. This section does not apply to differentiated tuition rates charged for higher cost programs.
7. For purposes of this section, an institution must calculate a resident tuition rate increase based on the tuition rate paid by an average full-time resident student. The state board of higher education may exclude adjustments to a tuition rate resulting from a change in an institution's method of charging tuition, including the consolidation of existing fees into tuition rates or charging tuition based on a per-credit rate, from tuition rate calculations under this section.

**SECTION 34. LEGISLATIVE MANAGEMENT STUDY.** During the 2019-20 interim, the legislative management shall consider studying North Dakota university system competitive research programs, including the established program to stimulate competitive research. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 35. APPLICATION.** Section 12 of this Act applies to individuals initially entering a professional student exchange program in veterinary medicine, dentistry, or optometry after June 30, 2020.

**SECTION 36. EMERGENCY.** Sections 3, 4, 5, 21, 23, 25, 26, 27, 28, 29, 30, and 31 of this Act and the tier III capital building fund pool, capital assets, and capital building fund line items in section 1 of this Act are declared to be an emergency measure.

Approved May 2, 2019

Filed May 2, 2019

**CHAPTER 4**

**HOUSE BILL NO. 1004**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state department of health; to amend and reenact section 23-02.1-29 of the North Dakota Century Code, relating to vital records fees; to provide a statement of legislative intent; to provide a report; 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 department of health for the purpose of defraying the expenses of the state department of health, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$36,371,434	\$1,348,140	\$37,719,574
Operating expenses	27,714,187	5,038,893	32,753,080
Capital assets	2,188,491	1,679,322	3,867,813
Grants	46,441,941	6,815,351	53,257,292
Tobacco prevention	13,646,704	(744,640)	12,902,064
Women, infants, and children food payments	20,200,000	(420,000)	19,780,000
Medical marijuana	<u>1,465,704</u>	<u>(1,465,704)</u>	<u>0</u>
Total all funds	\$148,028,461	\$12,251,362	\$160,279,823
Less estimated income	<u>115,278,152</u>	<u>8,641,081</u>	<u>123,919,233</u>
Total general fund	\$32,750,309	\$3,610,281	\$36,360,590
Full-time equivalent positions	211.50	(7.50)	204.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Medical marijuana	\$95,066	\$0
Women, infants, and children system upgrade	1,739,220	354,554
Law enforcement support	1,420,000	0
Microbiology laboratory technology upgrades	0	483,000
Microbiology laboratory capital improvements	<u>0</u>	<u>1,220,000</u>
Total all funds	\$3,254,286	\$2,057,554
Less estimated income	<u>3,254,286</u>	<u>1,967,554</u>
Total general fund	\$0	\$90,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The state department of health shall report to

the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. INSURANCE TAX DISTRIBUTION FUND.** The estimated income line item included in section 1 of this Act includes \$1,125,000 from the insurance tax distribution fund for rural emergency medical services grants.

**SECTION 4. TOBACCO PREVENTION AND CONTROL TRUST FUND.** The estimated income line item in section 1 of this Act includes \$2,625,324 from the tobacco prevention and control trust fund. Of this amount, \$300,000 is for domestic violence offender treatment grants, \$580,324 is for cancer programs, \$525,000 is for grants to local public health units, and \$1,220,000 is for microbiology laboratory capital improvements.

**SECTION 5. AMENDMENT.** Section 23-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-29. Fees.**

1. The state department of health shall prescribe the fees, if any, not to exceed ~~five~~fifteen dollars, to be paid for the following:
  - a. Each certified copy of a record.
  - b. Each certified statement of the facts of birth other than a copy of the original birth record.
  - c. Each filing of a new record of birth or fetal death following adoption, ~~legitimation, or determination of paternity.~~
  - d. Each filing of a delayed record of birth or death except as provided for in subsection 4 of section 23-02.1-18.
  - e. Each filing of an amendment to a birth or death record.
  - f. A search of the files or records when no copy is made.
  - g. A noncertified informational copy of a death or marriage record.

The fee for each additional copy of ~~the same document,~~ a death or fetal death record, requested at the same time, may not exceed ~~two~~ten dollars.

2. Except as otherwise provided in subsection 3, fees collected under this section by the state registrar must be deposited in the ~~general fund of this state~~operating fund of the state department of health, according to procedures established by the state treasurer.
3. The state department of health shall ~~charge a fee~~quarterly pay fees in the amount of two dollars for the issuance of each certified copy of a birth record, in addition to those fees authorized by subsection 1, in the amount of two dollars for the issuance of each certified copy of a birth record. ~~This additional fee must be paid to the state registrar prior to the issuance of each certified copy of a birth record. The state registrar shall quarterly pay the additional fees collected pursuant to this subsection into the children's trust fund created by section 50-27-01.~~

4. All fees collected in excess of the fees appropriated must be transferred to the general fund of this state at the end of each biennium.

**SECTION 6. LEGISLATIVE INTENT - LIFE SAFETY PLAN REVIEW FEES.** It is the intent of the sixty-sixth legislative assembly that the state department of health reduce the minimum fee charged for life safety construction or renovation plans review of small projects for facilities from \$750 to \$500.

**SECTION 7. LEGISLATIVE INTENT - ELECTRONIC ACCESS TO VITAL RECORDS - REPORT TO LEGISLATIVE MANAGEMENT.** It is the intent of the sixty-sixth legislative assembly that the state department of health implement a program of electronic access to vital records through web access or kiosk in cooperation with other state agencies in at least eight locations around the state. The state department of health shall report to the legislative management before July 1, 2020, regarding the implementation of electronic access to vital records.

**SECTION 8. EMERGENCY.** The sum of \$483,000, of which \$90,000 is from the general fund, \$360,000 is from federal funds, and \$33,000 is from special funds from fee revenue, for microbiology laboratory technology upgrades appropriated in section 1 of this Act is declared to be an emergency measure.

Approved April 26, 2019

Filed April 26, 2019

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

(Appropriations Committee)

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, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$848,407	\$21,672	\$870,079
Operating expenses	<u>263,704</u>	<u>(35,144)</u>	<u>228,560</u>
Total general fund	\$1,112,111	(\$13,472)	\$1,098,639
Full-time equivalent positions	4.00	0.00	4.00

Approved April 11, 2019

Filed April 12, 2019



**CHAPTER 6**

**HOUSE BILL NO. 1006**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota aeronautics commission; and to provide an exemption.

**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 aeronautics commission for the purpose of defraying the expenses of the North Dakota aeronautics commission, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,431,222	\$95,106	\$1,526,328
Operating expenses	2,204,190	(199,436)	2,004,754
Capital assets	100,000	(100,000)	0
Grants	<u>7,150,000</u>	<u>38,650,000</u>	<u>45,800,000</u>
Total all funds	\$10,885,412	\$38,445,670	\$49,331,082
Less estimated income	<u>9,985,412</u>	<u>38,845,670</u>	<u>48,831,082</u>
Total general fund	\$900,000	(\$400,000)	\$500,000
Full-time equivalent positions	7.00	0.00	7.00

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Airport grants	\$0	<u>\$20,000,000</u>
Total special funds	\$0	\$20,000,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The aeronautics commission shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - AIRPORT GRANTS - EXEMPTION.** The estimated income line item in section 1 of this Act includes the sum of \$20,000,000 from the strategic investment and improvements fund for the aeronautics commission to provide airport grants during the biennium beginning July 1, 2019, and ending June 30, 2021. Section 54-44.1-11 does not apply to this funding, and any funds not spent by June 30, 2021, must be continued into the biennium beginning July 1, 2021, and ending June 30, 2023, and may be expended only for providing grants to airports.

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**SECTION 4. AIRPORT INFRASTRUCTURE FUND - AIRPORT GRANTS - EXEMPTION.** The estimated income line item in section 1 of this Act includes \$20,000,000 from the airport infrastructure fund for the aeronautics commission to provide grants to airports during the biennium beginning July 1, 2019, and ending June 30, 2021. Section 54-44.1-11 does not apply to this funding, and any funds not spent by June 30, 2021, must be continued into the biennium beginning July 1, 2021, and ending June 30, 2023, and may be expended only for providing grants to airports.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 7

### HOUSE BILL NO. 1007

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the veterans' home; to provide for a report; to provide for a transfer; to provide for an exemption; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the veterans' home for the purpose of defraying the expenses of the veterans' home, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$18,684,490	\$232,142	\$18,916,632
Operating expenses	5,454,239	(345,508)	5,108,731
Capital assets	411,303	285,030	696,333
Administrator's residence	0	233,450	233,450
Total all funds	\$24,550,032	\$405,114	\$24,955,146
Less estimated income	<u>18,598,593</u>	<u>677,229</u>	<u>19,275,822</u>
Total general fund	\$5,951,439	(\$272,115)	\$5,679,324
Full-time equivalent positions	120.72	0.00	120.72

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Equipment	\$44,500	\$99,400
Health information exchange software	15,000	0
Nurse call system upgrade	82,500	0
Strategic plan	0	25,000
Flooring project	0	138,700
Administrator's residence demolition	0	233,450
Security system upgrades	0	<u>52,500</u>
Total all funds	\$142,000	\$549,050
Less estimated income	<u>142,000</u>	<u>524,050</u>
Total general fund	\$0	\$25,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The veterans' home shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. ESTIMATED INCOME - SOLDIERS' HOME FUND - ADMINISTRATOR HOUSING STIPEND.** The estimated income line item in section 1 of this Act includes \$48,000 from the soldiers' home fund for providing a \$2,000 monthly housing stipend to the veterans' home administrator for housing costs off the veterans' home campus, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. ESTIMATED INCOME - SOLDIERS' HOME FUND - ONE-TIME FUNDING.** The estimated income line item in Section 1 of this Act includes \$524,050 of one-time funding from the soldiers' home fund, of which \$99,400 is for equipment, \$138,700 is for a flooring project, \$233,450 is for the demolition of the administrator's residence, and \$52,500 is for security system upgrades, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. EXEMPTION - LINE ITEM TRANSFER - 2017-19 BIENNIUM - NURSE CALL SYSTEM UPGRADE.** Notwithstanding section 54-16-04, at the request of the veterans' home administrator during the 2017-19 biennium, the office of management and budget shall transfer the sum of \$68,000 of estimated income from the soldiers' home fund from the operating expenses line item to the capital assets line item of the veterans' home for the purpose of the nurse call system upgrade authorized by the sixty-fifth legislative assembly. The \$68,000 of funding transferred in this section and the \$82,500 from the soldiers' home fund appropriated in section 1 of chapter 32 of the 2017 Session Laws for the nurse call system upgrade, for a total of \$150,500, are not subject to section 54-44.1-11 and any unexpended funds are available for the nurse call system upgrade during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 6. EMERGENCY.** Section 5 of this Act is declared to be an emergency measure.

Approved April 26, 2019

Filed April 26, 2019

**CHAPTER 8**

**HOUSE BILL NO. 1008**

(Appropriations Committee)

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

**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 other income, to the department of financial institutions for the purpose of defraying the expenses of the department of financial institutions, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,813,840	\$208,815	\$7,022,655
Operating expenses	1,576,072	517,145	2,093,217
Contingency	<u>20,000</u>	<u>0</u>	<u>20,000</u>
Total special funds	\$8,409,912	\$725,960	\$9,135,872
Full-time equivalent positions	30.00	1.00	31.00

**SECTION 2. ONE-TIME FUNDING - REPORT TO LEGISLATIVE ASSEMBLY.**

The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Website redesign	<u>\$0</u>	<u>\$451,305</u>
Total special funds	\$0	\$451,305

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of financial institutions shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

Approved April 23, 2019

Filed April 24, 2019

**CHAPTER 9****HOUSE BILL NO. 1009**

(Appropriations Committee)

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 moneys in the general fund in the state treasury, not otherwise appropriated, to the state fair association for the purpose of defraying the expenses of the state fair association, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Premiums	\$515,665	\$27,168	\$542,833
Total general fund	\$515,665	\$27,168	\$542,833

Approved May 1, 2019

Filed May 2, 2019

**CHAPTER 10**

**HOUSE BILL NO. 1010**

(Appropriations Committee)

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

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the council on the arts for the purpose of defraying the expenses of the council on the arts, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$905,453	\$63,405	\$968,858
Operating expenses	355,851	(70,077)	285,774
Grants	<u>2,090,494</u>	<u>0</u>	<u>2,090,494</u>
Total all funds	\$3,351,798	(\$6,672)	\$3,345,126
Less estimated income	<u>1,786,922</u>	<u>(48,000)</u>	<u>1,738,922</u>
Total general fund	\$1,564,876	\$41,328	\$1,606,204
Full-time equivalent positions	5.00	0.00	5.00

**SECTION 2. APPROPRIATION - CULTURAL ENDOWMENT FUND.** All income from the cultural endowment fund is appropriated to the council on the arts for the furthering of the cultural arts in the state for the biennium beginning July 1, 2019, and ending June 30, 2021.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 11

### HOUSE BILL NO. 1011

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the highway patrol; to create and enact section 39-03-09.1 of the North Dakota Century Code, relating to job shadowing with the highway patrol; to provide for a transfer; to provide an exemption; and to provide for a report.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the highway patrol for the purpose of defraying the expenses of the highway patrol, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Highway patrol	\$57,230,706	\$4,263,397	\$61,494,103
Total all funds	\$57,230,706	\$4,263,397	\$61,494,103
Less estimated income	14,703,278	2,495,420	17,198,698
Total general fund	\$42,527,428	\$1,767,977	\$44,295,405
Full-time equivalent positions	204.00	(7.00)	197.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Taser and AED equipment	\$358,000	\$0
Pipeline protest law enforcement support	3,234,000	0
Electronic payment processing system	44,000	0
Aircraft engine overhaul	0	81,830
Drone purchase	0	96,228
Shooting range addition	0	1,729,100
Total all funds	\$3,636,000	\$1,907,158
Total special funds	3,636,000	1,825,328
Total general fund	\$0	\$81,830

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The highway patrol shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3.** Section 39-03-09.1 of the North Dakota Century Code is created and enacted as follows:



**39-03-09.1. Job shadowing.**

For purposes of education and community outreach, and to promote public trust, the superintendent may permit a nonmember of the highway patrol to participate in job shadowing activities, including:

1. Participating in a ride-along program with a member of the highway patrol while on duty;
2. Operating a highway patrol motor vehicle on a closed course under the supervision of a member of the highway patrol; and
3. Discharging a firearm owned and used by the highway patrol while at a training facility and under the supervision of a member of the highway patrol.

**SECTION 4. SPECIAL FUNDS TRANSFER - HIGHWAY TAX DISTRIBUTION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$7,204,043, or so much of the sum as may be necessary, from the state highway tax distribution fund which may be transferred at the direction of the superintendent of the highway patrol for the purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. MOTOR CARRIER ELECTRONIC PERMIT TRANSACTION FUND.** The estimated income line item in section 1 of this Act includes \$3,356,069 from the motor carrier electronic permit transaction fund for the purpose of defraying various expenses associated with the issuance of permits and other nonenforcement motor carrier and administrative activities, including the purchase of equipment and the construction of an addition to the indoor shooting range, during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 6. EXEMPTION.** The amount of \$28,171 appropriated for an aircraft engine overhaul in the special funds line item in section 2 of chapter 23 of the 2017 Session Laws is not subject to section 54-44.1-11 and may be continued into the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 7. 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 \$200 per month for the biennium beginning July 1, 2019, and ending June 30, 2021. 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 the patrol officers' respective home stations. The amounts must be paid at the time and in the same manner as salaries are paid to members of the highway patrol and may be paid without the presentation of receipts or other memorandums.

**SECTION 8. RELOCATION OF LAW ENFORCEMENT TRAINING ACADEMY - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** During the 2019-20 interim, the highway patrol shall develop alternatives to relocate the housing and classroom portions of the law enforcement training academy. In developing the alternatives, the highway patrol shall review locations for a new facility, evaluate the proper capacity of the facility to serve future law enforcement training needs, and obtain estimated costs of each alternative. The highway patrol shall report to the appropriations committees of the sixty-seventh legislative assembly regarding the alternatives to relocate the training academy.

Approved May 1, 2019

Filed May 2, 2019

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

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to create and enact a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to exemptions from motor vehicle excise tax; to amend and reenact section 24-02-45.1 of the North Dakota Century Code, relating to cooperative agreements with private entities for the construction of certain items on the state highway system; to provide for a contingent loan authorization; provide a contingent appropriation; to provide for transfers; to provide legislative intent; to provide an exemption; to provide for a study; to provide for a report; 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 from special funds derived from federal funds and other income, to the department of transportation for the purpose of defraying the expenses of the department of transportation, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$201,478,341	(\$3,651,303)	\$197,827,038
Operating expenses	229,381,646	28,156,139	257,537,785
Capital assets	771,101,851	89,924,093	861,025,944
Grants	<u>67,528,030</u>	<u>28,326,607</u>	<u>95,854,637</u>
Total special funds	\$1,269,489,868	\$142,755,536	\$1,412,245,404
Full-time equivalent positions	1,047.00	(65.00)	982.00

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Pipeline protest law enforcement support	\$709,000	\$0
Electronic payment processing system	306,000	0
Driver's license system project	0	22,500,000
Minot and Williston driver's license facility maintenance	<u>0</u>	<u>1,300,000</u>
Total special funds	\$1,015,000	\$23,800,000

The 2019-21 one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of transportation shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. LINE ITEM TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer between appropriation authority the salaries and wages, operating expenses, capital assets, and grants line

items in section 1 of this Act as requested by the director of the department of transportation when it is cost-effective for construction and maintenance of highways. The department of transportation shall notify the legislative council of any transfers made pursuant to this section.

**SECTION 4. EXEMPTION - ENHANCED STATE HIGHWAY INVESTMENT FUNDING.** Section 54-44.1-11 does not apply to funding of \$503,115,558 in the capital assets line item relating to enhanced state highway investments in section 1 of chapter 12 of the 2015 Session Laws. Any funds continued into the 2019-21 biennium but not spent by June 30, 2021, must be continued into the biennium beginning July 1, 2021, and ending June 30, 2023, and may be expended only for enhanced state highway investments.

**SECTION 5. APPROPRIATION - GENERAL FUND - SHORT LINE RAILROAD PROGRAM.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,500,000, or so much of the sum as may be necessary, to the department of transportation for the purpose of enhancing the department's short line railroad program, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funding provided in this section is considered a one-time funding item.

**SECTION 6. APPROPRIATION - 2017-19 BIENNIUM - GENERAL FUND - ROAD MAINTENANCE FUNDING - EXEMPTION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$13,000,000, or so much of the sum as may be necessary, to the department of transportation for the purpose of road maintenance, for the period beginning with the effective date of this Act and ending June 30, 2019. The funding provided in this section is considered a one-time funding item. Section 54-44.1-11 does not apply to this funding and any funds not spent by June 30, 2019, must be continued into the biennium beginning July 1, 2019, and ending June 30, 2021, and may be expended only for road maintenance.

**SECTION 7. CONTINGENT LOAN AUTHORIZATION - CONTINGENT APPROPRIATION - HIGHWAY IMPROVEMENT PROJECTS.** The department of transportation may borrow from the Bank of North Dakota, \$50,000,000, or so much of the sum as may be necessary, which is appropriated to the department of transportation for matching federal funds that may become available, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funds authorized in this section may be borrowed and spent only upon certification by the director of the department of transportation to the director of the office of management and budget that the department has been awarded additional federal grants, which were applied for after February 1, 2019, during the biennium beginning July 1, 2019, and ending June 30, 2021. The department of transportation shall request from the sixty-seventh legislative assembly an appropriation to repay any outstanding loans authorized in this section. The appropriation in this section is a one-time funding item.

**SECTION 8. AMENDMENT.** Section 24-02-45.1 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-45.1. Cooperative agreements with private entities for the construction of certain items on the state highway system.**

Notwithstanding any other provision of law, the director may enter a cooperative agreement with a private entity for the construction of an item on the state highway system which will benefit the private entity and the traveling public, as determined by the director. The private entity's cost-share of the items requested to be added to the

state highway system must be paid for in advance of the construction by the private entity before the department can construct the project. Funds received by the department pursuant to this section must be deposited in the state highway fund as prescribed by section 24-02-41 and are appropriated to the department. If the department requires engineering or contracting services for a project under this section, it may provide the services or procure the services in accordance with section 24-02-07.3 and 24-02-17.

**SECTION 9. LEGISLATIVE INTENT - MAINTENANCE SECTION SITES - SEASONAL WINTER SERVICES.** It is the intent of the sixty-sixth legislative assembly that the department of transportation provide seasonal winter services at the Mayville, Courtenay, Gackle, New England, Litchville, and Finley maintenance section sites for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 10. DEPARTMENT OF TRANSPORTATION STUDY - PUBLIC TRANSPORTATION SERVICES - REPORT TO LEGISLATIVE MANAGEMENT.** During the 2019-20 interim, the department of transportation shall study public transportation services within the state. The study must include the number of users of public transportation services, demographics of the users, other transportation options available to users of public transportation services, and the identification of areas of the state which have no public or private transportation services available.

<sup>2</sup> **SECTION 11.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

Any motor vehicle in the possession of and used exclusively by a public transportation provider that receives a distribution of funds under section 39-04.2-04 to provide public transportation services.

**SECTION 12. EFFECTIVE DATE.** Section 11 of this Act is effective for taxable events occurring after June 30, 2019.

**SECTION 13. EMERGENCY.** Sections 6 and 8 of this Act are declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

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<sup>2</sup> Section 57-40.3-04 was also amended by section 1 of Senate Bill No. 2187, chapter 503.

**CHAPTER 13**

**HOUSE BILL NO. 1013**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; to create and enact a new section to chapter 15-02 of the North Dakota Century Code; relating to investment reports; to repeal section 57-51-15.1 of the North Dakota Century Code, relating to the energy impact fund; to provide for transfers; to provide for distributions from permanent funds; to provide an exemption; to provide a report; 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 from special funds derived from the state lands maintenance fund and the oil and gas impact grant fund in the state treasury to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,005,550	(\$280,171)	\$5,725,379
Operating expenses	1,775,723	857,299	2,633,022
Grants	0	2,000,000	2,000,000
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$7,881,273	\$2,577,128	\$10,458,401
Full-time equivalent positions	31.00	(3.00)	28.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Information technology replacement project	\$3,600,000	\$0
Airport grants	40,000,000	0
Mineral revenue repayments	187,000,000	0
Oil and gas impact grants	0	2,000,000
Mineral valuation study	<u>0</u>	<u>350,000</u>
Total special funds	\$230,600,000	\$2,350,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The commissioner of university and school lands shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. DISTRIBUTIONS TO STATE INSTITUTIONS.** Pursuant to article IX of the Constitution of North Dakota, the board of university and school lands shall distribute during the biennium beginning July 1, 2019, and ending June 30, 2021, the following amounts, from the permanent funds managed for the benefit of the following entities:

Common schools	\$366,756,000
North Dakota state university	5,916,000
University of North Dakota	4,504,000
Youth correctional center	1,864,000
School for the deaf	1,898,000
North Dakota state college of science	1,736,000
State hospital	1,570,000
Veterans' home	732,000
Valley City state university	1,034,000
North Dakota vision services - school for the blind	1,122,000
Mayville state university	668,000
Dakota college at Bottineau	242,000
Dickinson state university	242,000
Minot state university	242,000
Total	\$388,526,000

**SECTION 4. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO OIL AND GAS IMPACT GRANT FUND.** The office of management and budget shall transfer the sum of \$2,000,000 from the strategic investment and improvements fund to the oil and gas impact grant fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. TRANSFER - ENERGY IMPACT FUND TO OIL AND GAS IMPACT GRANT FUND.** The commissioner of university and school lands shall transfer any unexpended funds remaining in the energy impact fund when the fund is repealed on June 30, 2021, to the oil and gas impact grant fund.

**SECTION 6.** A new section to chapter 15-02 of the North Dakota Century Code is created and enacted as follows:

**Investment reports - Report to budget section.**

The commissioner shall prepare annual reports on the investment performance of each fund under its control. The reports must be comparable to the reports prepared by the state investment board under section 21-10-06.1. The reports must identify the expenses deducted from each fund, including details on investment management fees, advisory fees, transaction fees, the agency's expenses attributed to the fund, and any other costs. The commissioner shall report at least annually to the budget section on the status of its investment performance.

**SECTION 7. REPEAL.** Section 57-51-15.1 of the North Dakota Century Code is repealed.

**SECTION 8. OIL AND GAS IMPACT GRANT FUND.** The grants line item and the total special funds line item in section 1 of this Act include the sum of \$2,000,000 from the oil and gas impact grant fund for grants to political subdivisions impacted by oil and gas development activities.

**SECTION 9. EXEMPTION - OIL AND GAS IMPACT GRANT FUND.** The amounts previously appropriated from the oil and gas impact grant fund and identified in section 10 of chapter 38 of the 2017 Session Laws related to the oil and gas impact

grant fund, including grant awards returned to the fund, are not subject to section 54-44.1-11. Any unexpended funds are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 10. EXEMPTION - INFORMATION TECHNOLOGY PROJECT - REPORT TO INFORMATION TECHNOLOGY COMMITTEE.** The \$3,600,000 appropriated from the state lands maintenance fund and identified in sections 1 and 12 of chapter 38 of the 2017 Session Laws is not subject to section 54-44.1-11, and any unexpended funds are available to complete the information technology project during the biennium beginning July 1, 2019, and ending June 30, 2021. During the 2019-20 interim, the commissioner of university and school lands shall provide at least one report to the interim information technology committee regarding the status of the information technology project.

**SECTION 11. EFFECTIVE DATE.** Section 7 of this Act becomes effective on June 30, 2021.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 14

### HOUSE BILL NO. 1014

(Appropriations Committee)

AN ACT to provide for an appropriation for defraying the expenses of the industrial commission and the agencies under the management of the industrial commission; to create and enact a new section to chapter 6-09 of the North Dakota Century Code, relating to a rebuilders home loan program; to amend and reenact section 54-17-40 and subdivision f of subsection 1 of section 57-51-15 of the North Dakota Century Code and section 7 of House Bill No. 1435, as approved by the sixty-sixth legislative assembly, relating to the housing incentive fund, the fund balance of the abandoned oil and gas well plugging and site reclamation fund, and a transfer to the statewide interoperable radio network fund; to provide a contingent authorization; to provide for a transfer; to provide for a contingent transfer; to provide an exemption; to provide for a report; to provide for a study; to provide a statement of legislative intent; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the industrial commission and agencies under its control for the purpose of defraying the expenses of the industrial commission and agencies under its control, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

Subdivision 1.

#### INDUSTRIAL COMMISSION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$22,014,084	\$1,570,366	\$23,584,450
Operating expenses	5,305,888	794,339	6,100,227
Capital assets	0	5,000,000	5,000,000
Grants - bond payments	13,210,484	(2,701,717)	10,508,767
Contingencies	<u>221,737</u>	<u>7,807</u>	<u>229,544</u>
Total all funds	\$40,752,193	\$4,670,795	\$45,422,988
Less estimated income	<u>15,343,206</u>	<u>2,650,584</u>	<u>17,993,790</u>
Total general fund	\$25,408,987	\$2,020,211	\$27,429,198
Full-time equivalent positions	110.25	2.00	112.25

Subdivision 2.

#### BANK OF NORTH DAKOTA

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Bank of North Dakota operations	\$58,489,204	\$4,358,595	\$62,847,799
Capital assets	<u>810,000</u>	<u>700,000</u>	<u>1,510,000</u>



Total special funds	\$59,299,204	\$5,058,595	\$64,357,799
Full-time equivalent positions	181.50	0.00	181.50

Subdivision 3.

#### HOUSING FINANCE AGENCY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,892,056	\$616,959	\$8,509,015
Operating expenses	4,743,355	602,921	5,346,276
Grants	31,794,828	1,671,772	33,466,600
Housing finance agency contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$44,530,239	\$2,891,652	\$47,421,891
Full-time equivalent positions	44.00	0.00	44.00

Subdivision 4.

#### MILL AND ELEVATOR ASSOCIATION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$39,308,519	\$7,139,305	\$46,447,824
Operating expenses	28,195,000	1,642,000	29,837,000
Contingencies	500,000	0	500,000
Agriculture promotion	<u>210,000</u>	<u>0</u>	<u>210,000</u>
Total special funds	\$68,213,519	\$8,781,305	\$76,994,824
Full-time equivalent positions	153.00	3.00	156.00

Subdivision 5.

#### BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$25,408,987	\$9,540,211	\$34,949,198
Grand total special funds	187,386.168	19,382.136	206,768.304
Grand total all funds	\$212,795,155	\$28,922,347	\$241,717,502

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Litigation	\$1,000,000	\$0
Industrial water supply asset study	150,000	0
Soil remediation studies	5,000,000	0
Survey review	800,000	0
Temporary employees	0	175,000
Rare earth elements study	0	160,000
Fracturing sand study	0	110,000
Oil database software upgrade	0	<u>5,000,000</u>
Total all funds	\$6,950,000	\$5,445,000

Less estimated income	<u>6,950,000</u>	<u>5,270,000</u>
Total general fund	\$0	\$175,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The industrial commission shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. BOND PAYMENTS.** The amount of \$10,508,767 included in subdivision 1 of section 1 of this Act in the grants - bond payments line item must be paid from the following funding sources during the biennium beginning July 1, 2019, and ending June 30, 2021:

North Dakota university system	\$4,959,448
North Dakota university system - energy conservation projects	415,664
Department of corrections and rehabilitation	689,299
Department of corrections and rehabilitation - energy conservation projects	16,180
State department of health	644,884
Job service North Dakota	434,847
Office of management and budget	567,125
Attorney general's office	647,500
State historical society	1,177,875
Parks and recreation department	66,875
Research and extension service	483,337
Veterans' home	<u>405,733</u>
Total	\$10,508,767

**SECTION 4. APPROPRIATION - HOUSING FINANCE AGENCY - ADDITIONAL INCOME.** In addition to the amount appropriated to the housing finance agency in subdivision 3 of section 1 of this Act, there is appropriated any additional income or unanticipated income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2019, and ending June 30, 2021. The housing finance agency shall notify the office of management and budget and the legislative council of any additional income or unanticipated income that becomes available to the agency resulting in an increase in appropriation authority.

**SECTION 5. APPROPRIATION - TRANSFER GENERAL FUND TO HIGH-LEVEL RADIOACTIVE WASTE FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$20,000, which the office of management and budget shall transfer to the high-level radioactive waste fund during the biennium beginning July 1, 2019, and ending June 30, 2021. The funding provided in this section is considered a one-time funding item.

**SECTION 6. APPROPRIATION - TRANSFER GENERAL FUND TO HOUSING INCENTIVE FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$7,500,000, which the office of management and budget shall transfer to the housing incentive fund during the biennium beginning July 1, 2019, and ending June 30, 2021. The funding provided in this section is considered a one-time funding item.

**SECTION 7. CONTINGENT FUNDING - INDUSTRIAL COMMISSION.** The amount of \$229,544 from the general fund and two full-time equivalent positions included in subdivision 1 of section 1 of this Act may be spent only in accordance with the provisions of this section. The industrial commission shall notify the office of management and budget and the legislative council when the total number of wells

capable of production and injection exceeds twenty thousand eight hundred. Subject to budget section approval, the industrial commission may spend \$229,544 from the contingencies line item and may hire two full-time equivalent positions if the total number of oil wells capable of production and injection exceeds twenty thousand eight hundred.

**SECTION 8. TRANSFER - ENTITIES UNDER THE CONTROL OF THE INDUSTRIAL COMMISSION TO INDUSTRIAL COMMISSION FUND.** The sum of \$1,172,603, or so much of the sum as may be necessary, included in the appropriation in subdivision 1 of section 1 of this Act, may be transferred from the entities within the control of the industrial commission or entities directed to make payments to the industrial commission fund for administrative services rendered by the commission. Transfers must be made during the biennium beginning July 1, 2019, and ending June 30, 2021, upon order of the commission. Transfers from the student loan trust fund must be made to the extent permitted by sections 54-17-24 and 54-17-25.

**SECTION 9. TRANSFER - BANK OF NORTH DAKOTA PROFITS TO GENERAL FUND.** The industrial commission shall transfer to the general fund \$140,000,000 from the current earnings and the accumulated profits of the Bank of North Dakota during the biennium beginning July 1, 2019, and ending June 30, 2021. The moneys must be transferred in the amounts and at the times requested by the director of the office of management and budget after consultation with the Bank of North Dakota president. For legislative council budget status reporting purposes, the transfer under this section is considered an ongoing revenue source.

**SECTION 10. TRANSFER - PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION.** The Bank of North Dakota shall transfer the sum of \$26,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the partnership in assisting community expansion fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 11. TRANSFER - AGRICULTURE PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION.** The Bank of North Dakota shall transfer the sum of \$4,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the agriculture partnership in assisting community expansion fund during the period beginning with the effective date of this Act and ending June 30, 2021. The Bank may use up to \$1,000,000 of the funding provided in this section to expand the parameters for the agriculture partnership in assisting community expansion program to assist farmers and livestock producers that suffered extraordinary losses related to river flooding in the state due to ice jams in the winter and spring of 2019 for the period beginning with the effective date of this Act and ending June 30, 2021.

**SECTION 12. TRANSFER - BIOFUELS PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION.** The Bank of North Dakota shall transfer the sum of \$1,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the biofuels partnership in assisting community expansion fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 13. TRANSFER - BEGINNING FARMER REVOLVING LOAN FUND.** The Bank of North Dakota shall transfer the sum of \$6,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the beginning farmer revolving loan fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 14. TRANSFER - NORTH DAKOTA DEVELOPMENT FUND.** The Bank of North Dakota shall transfer the sum of \$15,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the North Dakota development fund established under chapter 10-30.5 during the biennium beginning July 1, 2019, and ending June 30, 2021. Funding transferred under this section must be used to purchase existing venture capital assets held by the Bank of North Dakota.

**SECTION 15. TRANSFER - REBUILDERS LOAN PROGRAM PAYMENTS TO REBUILDERS HOME LOAN FUND.** From the principal payments received under the rebuilders loan program established in section 6-09-46, which were designated to replenish the Bank of North Dakota's current earnings and undivided profits pursuant to section 3 of chapter 83 of the 2013 Session Laws, the Bank shall transfer the sum of \$3,750,000 to the rebuilders home loan fund during the period beginning with the effective date of this Act and ending June 30, 2021. Any funds not committed to loans by September 30, 2020, must be returned to the Bank's current earnings and undivided profits.

**SECTION 16. CONTINGENT TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO INFRASTRUCTURE REVOLVING LOAN FUND.** The office of management and budget shall transfer up to \$40,000,000 of any oil and gas tax revenues deposited in the strategic investment and improvements fund during the period August 1, 2017, through July 31, 2019, exceeding \$755,000,000, from the strategic investment and improvements fund to the infrastructure revolving loan fund established under section 6-09-49, during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 17. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The operating expenses line item and the estimated income line item in subdivision 1 of section 1 of this Act include \$270,000 from the strategic investment and improvements fund for a rare earth element study and a fracturing sand study.

**SECTION 18. ESTIMATED INCOME - ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND.** The capital assets line item and the estimated income line item in subdivision 1 of section 1 of this Act include \$5,000,000 from the abandoned oil and gas well plugging and site reclamation fund for a risk-based data management system information technology project.

**SECTION 19. OIL AND GAS RESEARCH FUND - RECYCLING PRODUCED WATER STUDY - REPORT TO LEGISLATIVE MANAGEMENT.** Pursuant to the continuing appropriation in section 57-51.1-07.3, the industrial commission shall use \$300,000, or so much of the sum as may be necessary, from the oil and gas research fund to contract with the sponsor of the proposal selected for the study. The industrial commission shall issue a request for proposals for a study regarding the recycling of water used in oil and gas operations, also known as produced water, from oil and gas-producing regions of North Dakota. The study must include the development or compilation of data regarding methods for the recycling of produced water specific to this state, and must examine the relevant, objective economic, regulatory, scientific, technological, and feasibility considerations. The contractor shall provide reports on the status of the study at the request of the legislative management during the 2019-20 interim and shall provide a final report to the legislative management by October 1, 2020.

**SECTION 20.** A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

**Rebuilders home loan program - Rebuilders home loan fund - Continuing appropriation - Requirements.**

1. There is created in the state treasury the rebuilders home loan fund administered by the Bank of North Dakota. The fund consists of all moneys transferred to the fund by the legislative assembly. All moneys in the fund are appropriated to the Bank on a continuing basis for the rebuilders home loan program.
2. The Bank shall develop policies to implement this section. The Bank shall make or participate in loans to North Dakota residents affected by river flooding in the state due to ice jams in the winter and spring of 2019. Loans are available for rebuilding the resident's flood-damaged home or rebuilding nonowner-occupied property. A loan from the fund must have the interest rate fixed at one percent per year for no more than twenty years. A loan made to a homeowner or owner of nonowner-occupied property under this section may not exceed the lesser of seventy-five thousand dollars or the actual amount of documented damage not paid by flood insurance. For purposes of this section, "nonowner-occupied property" means property consisting of one or more rental dwelling units, none of which is occupied by the owner, and does not include hotel or motel accommodations or any other commercial property. For a resident rebuilding the resident's flood-damaged home, up to twenty percent of the loan proceeds disbursed under this program may be used for debt service, debt retirement, or other credit obligations. For every loan made from the fund to a homeowner to rebuild or replace that individual's flood-damaged home, principal and interest payments must be deferred for the first twenty-four months of the loan. There is no deferral of principal and interest payments for a loan for nonowner-occupied property.
3. A resident homeowner or owner of nonowner-occupied property is eligible for a loan under this section only if the home or property is located in an area affected by river flooding in the state due to ice jams in the winter and spring of 2019. To qualify for a loan under this section, the owner of nonowner-occupied property must have been the owner at the time of the flooding event, and the number of rental dwelling units in the property rebuilt under this section must remain the same as before the flooding event. A loan to the owner of nonowner-occupied property must be secured by the property for which the loan is made.
4. An application for a loan from the fund must be made to the Bank or originating financial institution, and, upon approval, a loan must be made from the fund in accordance with this section. An application for a loan to a homeowner or for a loan for nonowner-occupied property under this section may not be accepted after September 30, 2020.
5. Repayments to the rebuilders home loan fund must be transferred annually to replenish the Bank's current earnings and undivided profits which were transferred to the rebuilders home loan fund. If, subsequent to receiving a loan from the fund, the property for which the loan was made is purchased for flood mitigation purposes or otherwise sold, the balance of the loan and any interest accrued on the loan must be repaid to the fund upon the closing of the sale. If the borrower provides financial evidence satisfactory to the Bank to show that the borrower does not have the financial ability to repay the loan in full upon sale of the property, after the sale of the property the Bank may allow the borrower to continue to make payments based on the loan terms.

6. The Bank may deduct, from interest payments received on loans, a service fee for administering the fund for the Bank and originating financial institutions. The Bank 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 by the fund.

**SECTION 21. AMENDMENT.** Section 54-17-40 of the North Dakota Century Code is amended and reenacted as follows:

**54-17-40. Housing incentive fund - Continuing appropriation - Report to budget section.**

1. The housing incentive fund is created as a special revolving fund at the Bank of North Dakota. The housing finance agency may direct disbursements from the fund and a continuing appropriation from the fund is provided for that purpose.
2.
  - a. After a public hearing, the housing finance agency shall create an annual allocation plan for the distribution of the fund. At least ~~twenty-five~~<sup>fifteen</sup> percent of the fund must be used to assist developing communities to address an unmet housing need or alleviate a housing shortage.
  - b. ~~The annual allocation plan must give first priority through its scoring and ranking process to housing for essential service workers. For purposes of this subsection, "essential service workers" means individuals employed by a city, county, school district, medical or long-term care facility, the state of North Dakota, or others as determined by the housing finance agency who fulfill an essential public service.~~
  - c. ~~The second priority in the annual allocation plan must be to provide housing for individuals and families of low or moderate income. For purposes of this second priority, eligible income limits are determined as a percentage of median family income as published in the most recent federal register notice. Under this second priority, the annual allocation plan must give preference to projects that benefit households with the lowest income and to projects that have rent restrictions at or below department of housing and urban development published federal fair market rents or department of housing and urban development section 8 payment standards.~~
3. The housing finance agency shall adopt guidelines for the fund so as to address unmet housing needs in this state. Assistance from the fund may be used solely for:
  - a. New construction, rehabilitation, or acquisition of a multifamily housing project;
  - b. Gap assistance, matching funds, and accessibility improvements;
  - c. Assistance that does not exceed the amount necessary to qualify for a loan using underwriting standards acceptable for secondary market financing or to make the project feasible; and
  - d. Rental assistance, emergency assistance, or targeted supportive services designated to prevent homelessness.

4. Eligible recipients include units of local, state, and tribal government; local and tribal housing authorities; community action agencies; regional planning councils; and nonprofit organizations and for-profit developers of multifamily housing. Individuals may not receive direct assistance from the fund.
5. Except for subdivision d of subsection 3, assistance is subject to repayment or recapture under the guidelines adopted by the housing finance agency. Any assistance that is repaid or recaptured must be deposited in the fund and is appropriated on a continuing basis for the purposes of this section.
6. The agency may collect a reasonable administrative fee from the fund, project developers, applicants, or grant recipients. The origination fee assessed to grant recipients may not exceed five percent of the project award.
7. ~~The housing finance agency shall maintain a register reflecting the number of housing units owned or master leased by cities, counties, school districts, or other employers of essential service workers. This register must also reflect those entities that are providing rent subsidies for their essential workers.~~
8. Upon request, the housing finance agency shall report to the industrial commission regarding the activities of the housing incentive fund.
- 9-8. At least once per biennium, the housing finance agency shall provide a report to the budget section of the legislative management regarding the activities of the housing incentive fund. ~~The report must include the following:~~
  - a. ~~The overall number of units owned, master leased, or subsidized by political subdivisions or other employers of essential service workers; and~~
  - b. ~~A listing of projects approved and the number of units within those projects that provide housing for essential service workers.~~

**3 SECTION 22. AMENDMENT.** Subdivision f of subsection 1 of section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

- f. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding four million dollars per fiscal year and not in an amount that would bring the balance in the fund to more than ~~one hundred~~fifty million dollars.
- (2) After August 31, 2019, the state treasurer shall allocate four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars per fiscal year and not in an amount that would bring the balance in the fund to more than ~~one hundred~~fifty million dollars.

**SECTION 23. AMENDMENT.** Section 7 of House Bill No. 1435, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

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<sup>3</sup> Section 57-51-15 was also amended by section 3 of House Bill No. 1066, chapter 504.

**SECTION 7. TRANSFER - BANK OF NORTH DAKOTA PROFITS - STATEWIDE INTEROPERABLE RADIO NETWORK FUND.** TheAfter other moneys in the statewide interoperable radio network fund, the transfer of \$20,000,000 from the strategic investment and improvements fund, and the \$80,000,000 line of credit have been used, the industrial commission shall transfer the sum of \$20,000,000 from the current earnings and accumulated undivided profits of the Bank of North Dakota to the statewide interoperable radio network fund, during the period beginning with the effective date of this Act, and ending June 30, 2021.

**SECTION 24. EXEMPTION - OIL AND GAS TAX REVENUE ALLOCATIONS - NORTH DAKOTA OUTDOOR HERITAGE FUND.** Notwithstanding the provisions of section 57-51-15 relating to the allocations to the North Dakota outdoor heritage fund, for the period beginning September 1, 2019, and ending August 31, 2021, the state treasurer shall allocate eight percent of the oil and gas gross production tax revenue available under subsection 1 of section 57-51-15 to the North Dakota outdoor heritage fund, but not in an amount exceeding \$7,500,000 per fiscal year.

**SECTION 25. EXEMPTION - OIL AND GAS TAX REVENUE ALLOCATIONS - OIL AND GAS RESEARCH FUND - PILOT PROJECT FOR UNDERGROUND GAS STORAGE.**

1. Notwithstanding the provisions of section 57-51.1-07.3 relating to the allocations to the oil and gas research fund, for the period beginning August 1, 2019, and ending July 31, 2021, the state treasurer shall deposit two percent of the oil and gas gross production tax and oil extraction tax revenues, up to \$16,000,000, into the oil and gas research fund before depositing oil and gas tax revenues under section 57-51.1-07.5.
2. Pursuant to the continuing appropriation in section 57-51.1-07.3, the industrial commission shall use \$6,000,000, or so much of the sum as may be necessary, from the oil and gas research fund to contract with the energy and environmental research center for pilot projects relating to the underground storage of produced natural gas. The pilot projects may include studies and demonstration projects. During the 2019-20 interim, the energy and environmental research center shall provide quarterly reports to the industrial commission and at least one report to the legislative management regarding the results and recommendations of the pilot project.

**SECTION 26. EXEMPTION - INDUSTRIAL COMMISSION FUND.** The amount of \$1,103,779 appropriated to the industrial commission in subdivision 1 of section 1 of chapter 39 of the 2017 Session Laws and transferred pursuant to section 8 of chapter 39 of the 2017 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the industrial commission for administrative services rendered by the commission during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 27. EXEMPTION - SURVEY REVIEW - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The amount of \$800,000 appropriated from the strategic investment and improvements fund in section 2 of chapter 426 of the 2017 Session Laws is not subject to section 54-44.1-11. Any unexpended funds from this appropriation are available to the industrial commission for expert legal testimony associated with the survey review during the biennium beginning July 1, 2019, and ending June 30, 2021.



**SECTION 28. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - LIGNITE MARKETING FEASIBILITY STUDY.** The amount of \$4,500,000 from the lignite research fund, or so much of the amount as may be necessary, may be used for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and industry jobs or that will lead to increased development of lignite and its products and create new lignite industry jobs and economic growth for the general welfare of this state. Moneys appropriated pursuant to this section also may be used for the purpose of contracting for nonmatching studies and activities in support of the lignite vision 21 program; for litigation that may be necessary to protect and promote the continued development of lignite resources; for nonmatching externality studies and activities in externality proceedings; or other marketing, environmental, or transmission activities that assist with marketing of lignite-based electricity and lignite-based byproducts. Moneys needed for the purposes stated in this section are available to the industrial commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

**SECTION 29. HEDGING STRATEGIES STUDY - BANK OF NORTH DAKOTA - REPORT TO LEGISLATIVE ASSEMBLY.** During the 2019-20 interim, the Bank of North Dakota shall conduct a study on the use of various hedging strategies to protect the state from volatile swings in oil prices. Before January 15, 2021, the Bank of North Dakota shall report the results of its study to the appropriations committees of the sixty-seventh legislative assembly.

**SECTION 30. LEGISLATIVE INTENT - LIGNITE RESEARCH FUND - LIGNITE LITIGATION.** It is the intent of the sixty-sixth legislative assembly that at least \$500,000 of the funding in section 28 of this Act and any funding deposited in the lignite research fund related to successful litigation is available from the lignite research fund to be used to pay fees associated with lignite litigation that may be brought by the state to protect and promote the continued development of lignite resources.

**SECTION 31. EMERGENCY.** Sections 11, 15, and 20 of this Act are declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

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

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of corrections and rehabilitation; to amend and reenact subsection 5 of section 12-47-36 of the North Dakota Century Code, relating to disclosure of confidential records; to authorize the conveyance of real property owned by the state of North Dakota; to provide for a legislative management study; to provide a report; to provide for a department of corrections and rehabilitation review committee; and to provide an exemption.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of corrections and rehabilitation for the purpose of defraying the expenses of the department of corrections and rehabilitation, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Adult services	\$220,757,448	\$18,590,187	\$239,347,635
Youth services	30,740,509	1,545,821	32,286,330
Total all funds	\$251,497,957	\$20,136,008	\$271,633,965
Less estimated income	37,161,253	4,794,636	41,955,889
Total general fund	\$214,336,704	\$15,341,372	\$229,678,076
Full-time equivalent positions	845.29	54.50	899.79

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Equipment	\$167,000	\$298,700
Elite servers replacement	0	40,000
Extraordinary repairs	0	1,332,250
Youth correctional center campus infrastructure study	0	75,000
Department of corrections and rehabilitation study	0	400,000
Scan and screen device	0	230,000
Redundant fence	0	160,000
Portable x-ray equipment	0	22,000
Oracle software upgrade	0	165,000
Contracts and payments processing system	0	100,000
Inmate tracking system	0	160,000
Intake and legal movement system	0	240,000
Electronic medical records system	935,907	0

Pipeline protest law enforcement support	500,000	0
Justice reinvestment initiative	<u>500,000</u>	<u>0</u>
Total all funds	\$2,102,907	\$3,222,950
Less estimated income	<u>2,102,907</u>	<u>1,831,700</u>
Total general fund	\$0	\$1,391,250

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of corrections and rehabilitation shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in section 1 of this Act includes \$1,218,000 from the strategic investment and improvements fund for extraordinary repairs, an inmate tracking system, information technology upgrades, security equipment, and other one-time funding items.

**SECTION 4. AMENDMENT.** Subsection 5 of section 12-47-36 of the North Dakota Century Code is amended and reenacted as follows:

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, a community behavioral health program, a vocational rehabilitation program, a transitional living facility, 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.

**SECTION 5. PRETRIAL SERVICES - PILOT PROGRAM - REPORT.** The appropriation in section 1 of this Act includes \$755,034 and seven full-time equivalent positions for pretrial services. The department of corrections and rehabilitation shall establish a pretrial services program as a pilot project in three judicial districts of the state during the biennium beginning July 1, 2019, and ending June 30, 2021. The department of corrections and rehabilitation and the judicial branch shall collaborate with each other and with the commission on legal counsel for indigents and county and regional corrections to develop guidelines and procedures for the administration of pretrial services for the district courts for individuals charged with felony and misdemeanor offenses. The department of corrections and rehabilitation and the judicial branch shall provide a report regarding the process and outcome measures of the pretrial services program together with recommendations to the sixty-seventh legislative assembly.

**SECTION 6. EXEMPTION - COMMUNITY BEHAVIORAL HEALTH PROGRAM.** The \$7,000,000 from the general fund appropriated in the adult services line item relating to the community behavioral health program in section 1 of chapter 40 of the 2017 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this appropriation may be used for the community behavioral health program for individuals in custody or under the supervision of the department of corrections and rehabilitation or for the continuation of programming, when necessary, for individuals no longer in custody or under the supervision of the department, during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 7. DEPARTMENT OF CORRECTIONS AND REHABILITATION OPERATING FUND REVENUES.** Any moneys received by the department of

corrections and rehabilitation from correctional supervision, electronic monitoring, and detention; reimbursements from other agencies; profits received from department of corrections and rehabilitation commissary; miscellaneous revenue, including offender fines, fees, restitution, and medical copayments; and from the common schools trust fund, may be deposited in the department of corrections and rehabilitation operating fund and expended pursuant to legislative appropriation for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 8. CONVEYANCE OF LAND AND BUILDINGS - TOMPKINS BUILDING - EXEMPTION.** The state of North Dakota, by and through the department of human services, shall convey ownership of building 2404, formerly known as the nursing residence building and Tompkins building, and surrounding real property on the grounds of the state hospital, to the department of corrections and rehabilitation. Sections 54-01-05.2 and 54-01-05.5 do not apply to this conveyance.

**SECTION 9. LEGISLATIVE MANAGEMENT STUDY - DEPARTMENT OF CORRECTIONS AND REHABILITATION REVIEW COMMITTEE - MEMBERSHIP - DUTIES.**

1. During the 2019-20 interim, the legislative management shall study the department of corrections and rehabilitation. The legislative management shall create a department of corrections and rehabilitation review committee to conduct the study, consisting of six members as follows:
  - a. Three members of the house of representatives selected by the majority leader of the house of representatives, two of whom must represent the majority faction of the house of representatives and one of whom must represent the minority faction of the house of representatives; and
  - b. Three members of the senate selected by the majority leader of the senate, two of whom must represent the majority faction of the senate and one of whom must represent the minority faction of the senate.
2. The legislative management chairman shall designate the committee chairman and vice chairman and the legislative council shall provide staff services for the committee.
3. The committee shall conduct a comprehensive study of the department of corrections and rehabilitation. The study must include:
  - a. A review, with input from a consultant engaged by the department of corrections and rehabilitation, of gender-responsive correctional and rehabilitation facility and service needs. The review must include:
    - (1) The preferable location of facilities;
    - (2) The service needs of individuals sentenced to the department of corrections and rehabilitation; and
    - (3) The impact on families of individuals sentenced to the department of corrections and rehabilitation.
  - b. An assessment of facilities at the Missouri River correctional center, the James River correctional center, and the state hospital, with input from a consultant engaged by the department of corrections and rehabilitation. The assessment must:

- (1) Include the department of corrections and rehabilitation master plan, staffing plan, comprehensive service delivery strategy, and cost estimates;
  - (2) Be based on providing comprehensive services to those committed to the care, custody, and control of the department of corrections and rehabilitation;
  - (3) Include options for community-based and family-involved environments; and
  - (4) Consider the opportunity for vocational and workforce development.
- c. A review of vocational opportunities, educational opportunities, workforce development, and medical and behavioral health treatment for those committed to the care, custody, and control of the department of corrections and rehabilitation.
4. The committee shall advise the department of corrections and rehabilitation on the department's selection of consultants to assist the department and the committee in its study, for which \$400,000 is included in the appropriation from the general fund in section 1 of this Act.
  5. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 16

### HOUSE BILL NO. 1016

(Appropriations Committee)

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

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to job service North Dakota for the purpose of defraying the expenses of job service North Dakota, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$27,155,566	\$3,416,655	\$30,572,221
Operating expenses	11,501,255	6,339,640	17,840,895
Capital assets	20,000	0	20,000
Grants	5,458,571	707,541	6,166,112
Reed Act - unemployment insurance computer modernization	<u>11,209,557</u>	<u>(122,591)</u>	<u>11,086,966</u>
Total all funds	\$55,344,949	\$10,341,245	\$65,686,194
Less estimated income	<u>54,899,156</u>	<u>10,356,414</u>	<u>65,255,570</u>
Total general fund	\$445,793	(\$15,169)	\$430,624
Full-time equivalent positions	181.61	(9.00)	172.61

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Renovation of Bismarck regional office	\$100,000	\$0
Unemployment insurance modernization project	0	<u>611,852</u>
Total all funds	\$100,000	\$611,852
Total special funds	0	<u>611,852</u>
Total general fund	\$100,000	\$0

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. Job service North Dakota shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. ESTIMATED INCOME - REED ACT FUNDS - UNEMPLOYMENT INSURANCE COMPUTER MODERNIZATION.** The estimated income line item in section 1 of this Act includes \$11,086,966 from federal Reed Act funds made available to the state by the federal Reed Act distributions made in federal fiscal years

1957, 1958, 1999, and 2002, pursuant to section 903 of the federal Social Security Act. This sum, or so much of the sum as may be necessary, is for the purpose of developing a modernized unemployment insurance computer system, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. APPROPRIATION.** All federal funds received by job service North Dakota in excess of those funds appropriated in section 1 of this Act are appropriated to job service North Dakota for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. NEW JOBS TRAINING.** During the biennium beginning July 1, 2019, and ending June 30, 2021, job service North Dakota may not award more than \$2,500,000 for new agreements related to the new jobs training program under chapter 52-02.1.

Approved April 22, 2019

Filed April 23, 2019

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

(Appropriations Committee)

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

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from income, to the office of administrative hearings for the purpose of defraying the expenses of the office of administrative hearings, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,191,850	\$56,480	\$1,248,330
Operating expenses	<u>1,726,784</u>	<u>(144,450)</u>	<u>1,582,334</u>
Total special funds	\$2,918,634	(\$87,970)	\$2,830,664
Full-time equivalent positions	5.00	0.00	5.00

Approved April 22, 2019

Filed April 23, 2019



**CHAPTER 18**

**HOUSE BILL NO. 1018**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to create and enact a new section to chapter 54-60 of the North Dakota Century Code, relating to a beyond visual line of sight unmanned aircraft system program; to provide exemptions; to provide for a legislative management study; to provide for a transfer; to provide for a report; 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 the department of commerce, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,995,788	\$221,498	\$13,217,286
Operating expenses	15,477,622	2,620,581	18,098,203
Grants	48,910,416	8,928,111	57,838,527
Discretionary funds	2,200,000	(50,000)	2,150,000
Agricultural products utilization commission	3,152,915	(3,152,915)	0
North Dakota trade office	2,000,000	(400,000)	1,600,000
Partner programs	1,939,845	(377,314)	1,562,531
Entrepreneurship grants and vouchers	1,950,000	998,467	2,948,467
Intermodal container shipping fees	0	1,300,000	1,300,000
Total all funds	\$88,626,586	\$10,088,428	\$98,715,014
Less estimated income	58,283,906	139,387	58,423,293
Total general fund	\$30,342,680	\$9,949,041	\$40,291,721
Full-time equivalent positions	66.40	(4.60)	61.80

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Flood impact grants/loans	\$5,201,752	\$0
Unmanned aircraft system	2,000,000	2,225,000
Base retention grants	600,000	0
Enhanced use lease grant	3,000,000	3,000,000
Workforce grants to tribally controlled community colleges	500,000	500,000
Census 2020 program	0	1,000,000

Workforce safety grant	0	1,000,000
Entrepreneurship grants and vouchers	0	2,000,000
Sculpture maintenance grants	0	75,000
Nonresident nurse employment recruitment	0	800,000
Intermodal container transportation shipping fees	0	1,300,000
Job development and economic growth grant	0	25,000
Total all funds	\$11,301,752	\$11,925,000
Less estimated income	10,301,752	4,300,000
Total general fund	\$1,000,000	\$7,625,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of commerce shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. DISCRETIONARY FUNDS - RURAL HEALTH.** Of the \$2,150,000 from the general fund appropriated in the discretionary funds line item in section 1 of this Act, \$200,000 is designated for providing matching funds to an organization assisting in the recruitment, distribution, and supply, and enhancing the quality and efficiency of personnel providing health services in rural areas of the state.

**SECTION 4. EXEMPTION.** The amount of \$2,200,000 appropriated in the discretionary funds line item in section 1 of chapter 43 of the 2017 Session Laws, of which \$1,200,000 was from the general fund and \$1,000,000 was from the research North Dakota fund, is not subject to section 54-44.1-11 and any unexpended funds from this appropriation are available for discretionary uses during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. EXEMPTION.** The amount of \$2,000,000 appropriated from the strategic investment and improvements fund for the unmanned aircraft systems program in section 1 of chapter 43 of the 2017 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this program are available for the program during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 6. EXEMPTION.** The amount of \$1,500,000 appropriated from the general fund for the early childhood education grant program in section 1 of chapter 43 of the 2017 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this program are available for the program during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 7. TRANSFER - INTERNSHIP FUND.** The office of management and budget shall transfer \$855,000 of the amount appropriated in the operating expenses line item in section 1 of this Act to the internship fund for the purpose of administering the operation intern program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 8. EXEMPTION.** The amount of \$950,000 appropriated from the general fund in the operating expenses line item for the operation intern program in section 1 of chapter 43 of the 2017 Session Laws and transferred to the internship fund in section 7 of chapter 43 of the 2017 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this program are available for the program during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 9. TRADE OFFICE - MATCHING FUND REQUIREMENT.** The North Dakota trade office line item and the general fund appropriation in section 1 of this Act include \$1,600,000 of funding relating to the North Dakota trade office. The

department of commerce may spend sixty percent of this amount without requiring any matching funds from the trade office. Any additional amounts may be spent only to the extent the North Dakota trade office provides one dollar of matching funds from private or other public sources for each one dollar provided by the department for the biennium beginning July 1, 2019, and ending June 30, 2021. Matching funds may include money spent by businesses or organizations to pay salaries to export assistants, provide training to export assistants, or buy computer equipment as part of the North Dakota trade office's export assistance program.

**SECTION 10. ENTREPRENEURSHIP GRANTS AND VOUCHER PROGRAM - ONE-TIME FUNDING - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - EXEMPTION.** Section 1 of this Act includes the sum of \$2,948,467, of which \$740,956 is from the general fund, \$2,000,000 is from the strategic investment and improvements fund, and \$207,511 is from the economic development fund, for an entrepreneurship grants and voucher program to be developed and administered by the department of commerce, for the biennium beginning July 1, 2019, and ending June 30, 2021. The \$2,000,000 from the strategic investment and improvements fund is considered a one-time funding item. Of the \$2,000,000 from the strategic investment and improvements fund, \$900,000 is to be distributed equally to entrepreneurial centers located in Bismarck, Fargo, and Grand Forks, and \$150,000 is to be distributed to the entrepreneurial center located in Jamestown. The funding for the Jamestown entrepreneurial center may only be provided to the extent the center provides one dollar of matching funds from private or other nonstate sources for each one dollar provided by the department for the biennium beginning July 1, 2019, and ending June 30, 2021. The department shall establish guidelines to provide grants to entrepreneurial centers certified by the department. The department also shall establish guidelines to award vouchers to entrepreneurs to procure business development assistance from certified entrepreneurial centers or to provide grants to entrepreneurs working with an entrepreneurial center. The amount appropriated for entrepreneurship grants in section 1 of this Act is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2021, and ending June 30, 2023.

**SECTION 11. BIOTECHNOLOGY GRANT PROGRAM.** The grants line item in section 1 of this Act includes \$300,000 from the general fund for the purpose of providing biotechnology grants to a local association with bioscience experience to promote bioscience and biotechnology research and business development in North Dakota agriculture and life and energy science industries.

**SECTION 12. APPROPRIATION - 2017-19 BIENNIUM - BEYOND VISUAL LINE OF SIGHT UNMANNED AIRCRAFT SYSTEM PROGRAM - EXEMPTION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$28,000,000, or so much as the sum as may be necessary, to the department of commerce for the purpose of defraying the expenses relating to the beyond visual line of sight unmanned aircraft system program, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided under this section is not subject to section 54-44.1-11 and any unexpended funds may be continued and are available for the program during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 13.** A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

**Beyond visual line of sight unmanned aircraft system program - Requirements - Report to legislative management.**

The department may establish and administer a beyond visual line of sight unmanned aircraft system program for the design, purchase, implementation, and operating costs of a beyond visual line of sight unmanned aircraft system. The department shall require any entity receiving funding for this program which is operating the beyond visual line of sight unmanned aircraft system to provide quarterly payments to the state treasurer equal to three percent of the entity's gross income associated with the operation of the beyond visual line of sight unmanned aircraft system as reported in the entity's prior year financial statements. The state treasurer shall deposit any funds received under this section in the state general fund. The department shall provide semiannual reports to the legislative management regarding the development of the beyond visual line of sight unmanned aircraft system program and the total amount deposited by the state treasurer in the state general fund.

**SECTION 14. LEGISLATIVE MANAGEMENT STUDY - BEYOND VISUAL LINE OF SIGHT UNMANNED AIRCRAFT SYSTEM PROGRAM.** During the 2019-20 interim, the legislative management shall consider studying the future administration and regulation of the unmanned aircraft systems industry in North Dakota, including beyond visual line of sight unmanned aircraft system. The study must include a determination of the appropriate state agency or private entity to be assigned responsibility of regulating unmanned aircraft system programs, including licensing, registration, appropriate fees, and other responsibilities. The study may include a review of the audited financial statements associated with the beyond visual line of sight unmanned aircraft system of an entity receiving funding from the appropriation for the beyond visual line of sight unmanned aircraft system program in section 12 of this Act. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 15. LEGISLATIVE MANAGEMENT STUDY - MOTION PICTURE INCENTIVES.** During the 2019-20 interim, the legislative management shall consider studying motion picture incentives. The study must include a review of upper Midwest and neighboring states' statutes on motion picture incentives to assess their successes and challenges; an analysis of the economic impact that would benefit communities through food, lodging, supplies, and transportation; an assessment of existing industry infrastructure in the state and opportunities for growth; and an identification of unique geographic, seasonal, regulatory, and topographical assets the state has for the motion picture industry. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 16. SCULPTURE MAINTENANCE GRANTS - ONE-TIME FUNDING.** The grants line item in section 1 of this Act includes \$75,000 from the general fund for the purpose of providing grants, on a reimbursement basis, to maintain the structure and appearance of metal sculptures located adjacent to highways in North Dakota. Grant funds may be awarded only for sculptures with current land leases. The department of commerce shall establish guidelines to require a privately funded maintenance plan to be established for future maintenance cost of metal sculptures adjacent to highways in North Dakota. This funding is considered a one-time funding item.

**SECTION 17. NONRESIDENT NURSE EMPLOYMENT RECRUITMENT PROGRAM - ONE-TIME FUNDING.** The grants line item in section 1 of this Act includes \$800,000 from the general fund for the purpose of establishing a nonresident nurse employment recruitment program. The department of commerce shall provide up to \$4,000 in incentives for each nonresident licensed nurse who signs a written

agreement to work at least four years in a North Dakota licensed health care facility. Any licensed health care facility receiving funds from this program must provide two dollars of incentive matching funds for each one dollar provided by the department. This funding is considered a one-time funding item.

**SECTION 18. TRANSFER - ESTIMATED INCOME- BEGINNING FARMER REVOLVING LOAN FUND - ONE-TIME FUNDING.** As requested by the commissioner of the department of commerce, the Bank of North Dakota shall transfer from the beginning farmer revolving loan fund to the department of commerce the sum of \$1,300,000, or so much of the sum as may be necessary, included in the estimated income line item in section 1 of this Act for paying intermodal container transportation shipping fees in the event intermodal containers are unable to be shipped, resulting in fees for the transport of containers to new locations for the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item.

**SECTION 19. APPROPRIATION - 2017-19 BIENNIUM - NORTH DAKOTA GORGE PRESERVATION GRANTS - EXEMPTION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$750,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of providing grants, on a reimbursement basis, to an organization dedicated to preserving a North Dakota gorge for the period beginning with the effective date of this Act, and ending June 30, 2019. Grant funds may be awarded only for expenditures related to the purchase and maintenance of outdoor recreation equipment, the improvement and maintenance of real property, enhancing public access to natural resources, and addressing public safety hazards in a North Dakota gorge. Grant funds may be awarded only to the extent that matching funds on a dollar-for-dollar basis are provided from private or other nonstate sources. Matching funds may include in-kind payments for labor and materials. The funding provided in this section is considered a one-time funding item. The funding provided under this section is not subject to section 54-44.1-11 and any unexpended funds may be continued and are available for the program during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 20. JOB DEVELOPMENT AND ECONOMIC GROWTH GRANT - ONE-TIME FUNDING.** The grants line item in section 1 of this Act includes \$25,000 from the general fund for the purpose of providing a grant to an organization dedicated to promoting job development and economic growth through the purchase of a vacant building previously used to promote job development and economic growth for the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item.

**SECTION 21. EMERGENCY.** Sections 12, 13, and 19 of this Act are declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

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

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state board for career and technical education; to provide a statement of legislative intent; and to provide for a report to the sixty-seventh legislative assembly.

**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 career and technical education for the purpose of defraying the expenses of the state board for career and technical education, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,699,975	\$112,790	\$4,812,765
Operating expenses	1,240,589	1,117,207	2,357,796
Grants	30,106,356	(20,899,007)	9,207,349
Grants - secondary	0	24,587,780	24,587,780
Marketplace for kids	0	300,000	300,000
Grants - postsecondary	296,207	(39,225)	256,982
Adult farm management	579,822	1,314,427	1,894,249
Workforce training	2,000,000	0	2,000,000
Center for distance education	<u>0</u>	<u>9,351,188</u>	<u>9,351,188</u>
Total all funds	\$38,922,949	\$15,845,160	\$54,768,109
Less estimated income	<u>9,616,666</u>	<u>5,086,455</u>	<u>14,703,121</u>
Total general fund	\$29,306,283	\$10,758,705	\$40,064,988
Full-time equivalent positions	24.50	27.80	52.30

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
School district and area center grants	\$2,427,000	\$0
Marketplace for kids	<u>300,000</u>	<u>0</u>
Total all funds	\$2,727,000	\$0
Less estimated income	<u>2,477,000</u>	<u>0</u>
Total general fund	\$250,000	\$0

**SECTION 3. CENTER FOR DISTANCE EDUCATION - FUNDING DESIGNATION - LEGISLATIVE INTENT - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** Section 1 of this Act includes the sum of \$9,351,188, of which \$6,301,188 is from the general fund and \$3,050,000 is from other funds for the center for distance education for the biennium beginning July 1, 2019, and ending June 30, 2021. The general fund appropriation of \$6,301,188 includes a sum of

\$102,759 that may only be used for new enrollments during the biennium beginning July 1, 2019, and ending June 30, 2021. It is the intent of the sixty-sixth legislative assembly that the center for distance education develop a fee structure during the 2019-20 interim to become self-sustaining beginning in the biennium beginning July 1, 2021, and ending June 30, 2023. The department of career and technical education shall report to the appropriations committees of the sixty-seventh legislative assembly regarding the development of the new center for distance education fee structure.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 20

### HOUSE BILL NO. 1020

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota state university extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to provide for a report; to provide a statement of legislative intent; to provide an exemption; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm, for the purpose of defraying the expenses of the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

##### Subdivision 1.

#### NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Extension service	\$51,188,489	\$3,207,816	\$54,396,305
Soil conservation committee	1,091,520	0	1,091,520
Total all funds	\$52,280,009	\$3,207,816	\$55,487,825
Less estimated income	<u>26,646,689</u>	<u>1,131,470</u>	<u>27,778,159</u>
Total general fund	\$25,633,320	\$2,076,346	\$27,709,666
Full-time equivalent positions	252.98	(10.47)	242.51

##### Subdivision 2.

#### NORTHERN CROPS INSTITUTE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Northern crops institute	<u>\$3,642,721</u>	<u>\$197,306</u>	<u>\$3,840,027</u>
Total all funds	\$3,642,721	\$197,306	\$3,840,027
Less estimated income	<u>1,755,830</u>	<u>140,387</u>	<u>1,896,217</u>
Total general fund	\$1,886,891	\$56,919	\$1,943,810
Full-time equivalent positions	11.80	1.00	12.80

##### Subdivision 3.

#### UPPER GREAT PLAINS TRANSPORTATION INSTITUTE



	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Upper great plains transportation institute	\$22,060,242	\$1,231,981	\$23,292,223
Total all funds	\$22,060,242	\$1,231,981	\$23,292,223
Less estimated income	<u>18,617,068</u>	<u>278,826</u>	<u>18,895,894</u>
Total general fund	\$3,443,174	\$953,155	\$4,396,329
Full-time equivalent positions	43.88	0.00	43.88

Subdivision 4.

MAIN RESEARCH CENTER

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Main research center	<u>\$108,642,243</u>	<u>\$2,718,323</u>	<u>\$111,360,566</u>
Total all funds	\$108,642,243	\$2,718,323	\$111,360,566
Less estimated income	59,084,828	(1,141,588)	57,943,240
Total general fund	\$49,557,415	\$3,859,911	\$53,417,326
Full-time equivalent positions	336.12	7.93	344.05

Subdivision 5.

BRANCH RESEARCH CENTERS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Dickinson research center	\$6,825,551	\$190,311	\$7,015,862
Central grasslands research center	3,423,624	87,201	3,510,825
Hettinger research center	4,975,133	137,270	5,112,403
Langdon research center	2,964,607	87,453	3,052,060
North central research center	4,953,652	183,918	5,137,570
Williston research center	5,118,890	167,943	5,286,833
Carrington research center	<u>9,175,491</u>	<u>510,370</u>	<u>9,685,861</u>
Total all funds	\$37,436,948	\$1,364,466	\$38,801,414
Less estimated income	<u>20,281,691</u>	<u>318,697</u>	<u>20,600,388</u>
Total general fund	\$17,155,257	\$1,045,769	\$18,201,026
Full-time equivalent positions	110.29	(0.48)	109.81

Subdivision 6.

AGRONOMY SEED FARM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Agronomy seed farm	<u>\$1,536,129</u>	<u>\$29,846</u>	<u>\$1,565,975</u>
Total special funds	\$1,536,129	\$29,846	\$1,565,975
Full-time equivalent positions	3.00	0.00	3.00

Subdivision 7.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
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Grand total general fund	\$97,676,057	\$7,992,100	\$105,668,157
Grand total other funds	<u>127,922,235</u>	<u>757,638</u>	<u>128,679,873</u>
Grand total all funds	\$225,598,292	\$8,749,738	\$234,348,030

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Seed cleaning plants	\$1,500,000	\$750,000
Extraordinary repairs	0	940,465
Junior master gardener program	15,000	0
Road and bridge asset management system	300,000	0
Greenhouse	0	500,000
Total all funds	\$1,815,000	\$2,190,465
Total other funds	<u>1,700,000</u>	<u>1,440,465</u>
Total general fund	\$115,000	\$750,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The main and branch research centers shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. ADDITIONAL INCOME - APPROPRIATION.** In addition to the amount included in the grand total other funds appropriation line item in section 1 of this Act, any other income, including funds from federal acts, private grants, gifts, and donations, or from other sources received by the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm, except as otherwise provided by law, is appropriated for the purpose designated in the act, grant, gift, or donation, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in subdivision 4 of section 1 of this Act includes \$940,465 of one-time funding from the strategic investment and improvements fund for extraordinary repairs.

**SECTION 5. DICKINSON RESEARCH EXTENSION CENTER - MINERAL RIGHTS INCOME.** The Dickinson research extension center may spend up to \$755,000 of revenues received during the 2019-21 biennium from mineral royalties, leases, or easements for ongoing operational expenses. Any revenues received in excess of \$755,000 may be spent only for one-time expenditures for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 6. WILLISTON RESEARCH EXTENSION CENTER - MINERAL RIGHTS INCOME - REPORT.** The Williston research extension center shall report to the sixty-seventh legislative assembly on amounts received and spent from mineral royalties, leases, or easements in the biennium beginning July 1, 2017, and ending June 30, 2019, and the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 7. TRANSFER AUTHORITY.** Upon approval of the state board of agricultural research and education and appropriate branch research center directors,

the director of the office of management and budget shall transfer appropriation authority within subdivisions 1, 2, 4, and 5 of section 1 of this Act.

**SECTION 8. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS.** The state board of higher education may adjust or increase full-time equivalent positions as needed for the entities in section 1 of this Act, subject to availability of funds. All full-time or part-time positions must be separate from North Dakota state university. Annually, the board shall report to the office of management and budget and to the budget section any adjustments made pursuant to this section.

**SECTION 9. UNEXPENDED GENERAL FUND - EXCESS INCOME.** Any unexpended general fund appropriation authority to and any excess income received by entities listed in section 1 of this Act are not subject to the provisions of section 54-44.1-11, and any unexpended funds from these appropriations or revenues are available and may be expended by those entities, during the biennium beginning July 1, 2021, and ending June 30, 2023.

**SECTION 10. EXEMPTION - WILLISTON SEED CLEANING PLANT.** The \$1,500,000 of special funds appropriation authority for the Williston research extension center included in subdivision 5 of section 1 of chapter 45 of the 2017 Session Laws for a seed cleaning plant is not subject to the provisions of section 54-44.1-11 and may be continued and expended by the Williston research extension center for the seed cleaning plant during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 11. EXEMPTION - CARRINGTON RESEARCH CENTER AND NORTH CENTRAL RESEARCH CENTER.** Any amounts continued for seed cleaning plants at the Carrington research center and North Central research center pursuant to section 12 of chapter 45 of the 2017 Session Laws are not subject to the provisions of section 54-44.1-11 and any unexpended funds may be used to defray the expenses of seed cleaning plants at the Carrington research center and the North Central research center during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 12. LEGISLATIVE INTENT - WILLISTON RESEARCH CENTER GREENHOUSE.** It is the intent of the sixty-sixth legislative assembly that any future operations and maintenance expenses relating to the Williston research center greenhouse be paid from other funds.

**SECTION 13. APPROPRIATION - 2017-19 BIENNIUM - WEBSITE AND DIGITAL UPGRADES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$345,000, or so much of the sum as may be necessary, to the North Dakota state university extension service for website and digital upgrades, for the period beginning with the effective date of this Act, and ending June 30, 2019. In accordance with section 11 of chapter 45 of the 2017 Session Laws any unexpended funds from this appropriation may be continued into the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 14. EMERGENCY.** Section 13 of this Act is declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

**CHAPTER 21****HOUSE BILL NO. 1021**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the information technology department; to amend and reenact sections 37-17.3-02.2 and 37-17.3-03 of the North Dakota Century Code, relating to the membership of the statewide interoperability executive committee and a state cost-share for radios purchased for the statewide interoperable radio network; to provide a legislative intent statement; to provide for a report to the legislative management; to provide for a transfer; to provide an exemption; and to provide for a legislative management 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 information technology department for the purpose of defraying the expenses of the information technology department, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$59,359,772	\$22,014,729	\$81,374,501
Operating expenses	69,552,998	35,804,366	105,357,364
Capital assets	8,295,000	(4,041,883)	4,253,117
Center for distance education	9,079,116	(9,079,116)	0
Statewide longitudinal data system	4,310,561	76,584	4,387,145
Educational technology council	1,121,472	(1,121,472)	0
Edutech	9,752,767	(106,994)	9,645,773
K-12 wide area network	4,534,278	633,692	5,167,970
Geographic information system	1,147,716	1,054,913	2,202,629
Health information technology office	5,315,509	(436,363)	4,879,146
Statewide interoperable radio network	<u>13,700,000</u>	<u>(1,370,000)</u>	<u>12,330,000</u>
Total all funds	\$186,169,189	\$43,428,456	\$229,597,645
Less estimated income	<u>165,636,855</u>	<u>35,395,479</u>	<u>201,032,334</u>
Total general fund	\$20,532,334	\$8,032,977	\$28,565,311
Full-time equivalent positions	344.30	57.70	402.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Electronic payment processing system	\$375,000	\$0
Health information network expansion	43,555,133	0

Statewide interoperable network loan	15,000,000	0
Cybersecurity	0	15,400,000
Statewide land parcel project	0	1,150,000
Total all funds	\$58,930,133	\$16,550,000
Less estimated income	<u>58,930,133</u>	<u>5,150,000</u>
Total general fund	\$0	\$11,400,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The information technology department shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. EXCEPTION - LINE ITEM TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall make transfers of funds between line items in section 1 of this Act for the information technology department as may be requested by the chief information officer as determined necessary for the development and implementation of information technology projects. The department shall notify the legislative council of any transfers made pursuant to this section.

**SECTION 4. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - INFORMATION TECHNOLOGY INITIATIVES.** The estimated income line item in section 1 of this Act includes the sum of \$5,150,000 from the strategic investment and improvements fund for information technology initiatives, of which \$4,000,000 is for cybersecurity operating expenses and \$1,150,000 is for a geographic information system statewide land parcel project.

**SECTION 5. EXEMPTION.** The sum of \$43,555,133 of federal and other funds appropriated to the information technology department for the development of the health information network and care coordination project in chapter 46 of the 2017 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for the completion of the health information network and care coordination project during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 6. LEGISLATIVE MANAGEMENT STUDY - ACCESS TO LANDS.**

1. During the 2019-20 interim, the legislative management shall study access to public and private lands for hunting, trapping, fishing, and related issues, including trespass violations and penalties, and provide recommendations regarding a land access database with the capability of electronic posting. At the direction of the legislative management, before August 1, 2020, the information technology department and game and fish department shall establish a trial electronic posting and hunter access information system in up to three counties. The information technology department and game and fish department may contract with a third party to assist with the electronic posting and hunter access information system development and operation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.
2. The legislative management shall appoint a committee for this study as follows:

- a. The voting members of the committee, who must be appointed by the legislative management, are:
  - (1) Two members representing agriculture landowners;
  - (2) Two members representing sportsmen organizations; and
  - (3) Five members of the legislative assembly, including:
    - (a) One member of the majority party in the house of representatives;
    - (b) One member of the minority party in the house of representatives;
    - (c) One member of the majority party in the senate;
    - (d) One member of the minority party in the senate; and
    - (e) One member from either party in either chamber to serve as the committee chairman.
- b. The nonvoting members of the committee are:
  - (1) A representative of the North Dakota association of counties;
  - (2) The agriculture commissioner or the commissioner's designee;
  - (3) The director of the game and fish department or the director's designee;
  - (4) The chief information officer or the officer's designee; and
  - (5) A representative of the North Dakota state's attorneys' association.
3. A member of the committee who is not a state employee is entitled to reimbursement for mileage and expenses as provided by law for state officers and employees, to be paid by the legislative council. A state employee who is a member of the committee is entitled to receive that employee's regular salary and is entitled to reimbursement for mileage and expenses to be paid by the employing agency. A member of the committee who is a member of the legislative assembly is entitled to receive per diem compensation at the rate provided under section 54-35-10 for each day performing official duties of the committee. The legislative council shall pay the per diem compensation and reimbursement for travel and expenses as provided by law for any member of the committee who is a member of the legislative assembly.

**SECTION 7. LEGISLATIVE MANAGEMENT STUDY - INFORMATION TECHNOLOGY UNIFICATION INITIATIVE.** During the 2019-20 interim, the legislative management shall study the information technology department's transition to the run-grow-transform model and the information technology unification initiative. The study must include a review of changes in fees, services, operations, processes, and systems. The legislative management shall reports its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 8. LEGISLATIVE INTENT - INFORMATION TECHNOLOGY UNIFICATION INITIATIVE - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** It is the intent of the sixty-sixth legislative assembly that the information technology department provide direction to the executive branch agencies in the governor's cabinet not included in the information technology unification initiative pilot project regarding information technology strategic planning and operations. It is further the intent of the sixty-sixth legislative assembly that the sixty-seventh legislative assembly implement the findings and recommendations resulting from the information technology unification initiative pilot project.

**SECTION 9. INFORMATION TECHNOLOGY DEPARTMENT REVIEW - REPORT TO LEGISLATIVE MANAGEMENT.** During the 2019-20 interim, the information technology department shall conduct a review of service rates charged to state agencies, including rate structure and agency billing. The information technology department shall report the results of its review to the legislative management by September 1, 2020.

**SECTION 10. LEGISLATIVE MANAGEMENT STUDY - STATEWIDE INTEROPERABLE RADIO NETWORK.** During the 2019-20 interim, the legislative management shall study consolidated emergency and interoperable public safety communications system governance and funding options. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**4 SECTION 11. AMENDMENT.** Section 37-17.3-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.3-02.2. North Dakota statewide interoperability executive committee. (Effective through July 31, 2023)**

1. The statewide interoperability executive committee consists of:
  - a. The director of state radio or a designee;
  - b. The director of the division of homeland security or a designee;
  - c. The superintendent of the highway patrol or a designee;
  - d. The adjutant general or a designee;
  - e. The director of the department of transportation or a designee;
  - f. A representative of the North Dakota sheriff's and deputies association;
  - g. A representative of the North Dakota emergency managers association;
  - h. A representative of the North Dakota fire chiefs association;
  - i. A representative of the North Dakota emergency medical services association;
  - j. A representative of the North Dakota police chiefs association;

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<sup>4</sup> Section 37-17.3-02.2 was also amended by section 2 of House Bill No. 1435, chapter 293.

- k. A representative of the North Dakota peace officers association;
  - l. A representative of the North Dakota 911 association;
  - m. A representative of the North Dakota association of counties;
  - n. A representative of the North Dakota league of cities;
  - o. The North Dakota chief information officer or a designee;
  - n-p. The North Dakota Indian affairs commission executive director or a designee; and
  - o-q. One member of the North Dakota house of representatives and one member of the North Dakota senate appointed by the legislative management;
  - r. The director of the game and fish department or a designee; and
  - s. The state health officer or a designee.
2. The committee shall elect a chairman and vice chairman for terms of two years upon its initial meeting. ~~The adjutant general shall call and convene the initial meeting.~~
  3. The committee shall prepare recommendations regarding a statewide ~~integrated interoperable radio system network~~ with due consideration for all stakeholders reliant upon ~~the statewide interoperable radio communication system network.~~
  4. The committee may adopt rules governing the connection or integration of public safety answering points to the statewide interoperable radio network.

**North Dakota statewide interoperability executive committee. (Effective after July 31, 2023)**

1. The statewide interoperability executive committee consists of:
  - a. The director of state radio or a designee;
  - b. The director of the division of homeland security or a designee;
  - c. The superintendent of the highway patrol or a designee;
  - d. The adjutant general or a designee;
  - e. The director of the department of transportation or a designee;
  - f. A representative of the North Dakota sheriff's and deputies association;
  - g. A representative of the North Dakota emergency managers association;
  - h. A representative of the North Dakota fire chiefs association;
  - i. A representative of the North Dakota emergency medical services association;



- j. A representative of the North Dakota police chiefs association;
  - k. A representative of the North Dakota peace officers association;
  - l. A representative of the North Dakota 911 association; and
  - m. A representative of the North Dakota association of counties;
  - n. A representative of the North Dakota league of cities;
  - o. The North Dakota chief information officer or a designee;
  - p. The executive director of the North Dakota Indian affairs commission or a designee;
  - q. One member of the North Dakota house of representatives and one member of the North Dakota senate appointed by the legislative management;
  - r. The director of the game and fish department or a designee; and
  - s. The state health officer or a designee.
2. The committee shall elect a chairman and vice chairman for terms of two years upon its initial meeting. ~~The adjutant general shall call and convene the initial meeting.~~
  3. The committee shall prepare recommendations regarding a statewide integrated interoperable radio system network with due consideration for all stakeholders reliant upon athe statewide interoperable radio communication system network.
  4. The committee may adopt rules governing the connection or integration of public safety answering points to the statewide interoperable radio network.

<sup>5</sup> **SECTION 12. AMENDMENT.** Section 37-17.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.3-03. Political subdivisions may furnish receiving and transmitting sets for enforcement purposes.**

1. Each county and organized city within the state may furnish to its law enforcement, firefighters, and emergency medical personnel the appropriate ~~radio or radio systems~~ personal and vehicular radios that can access the ~~state~~ statewide interoperable radio system network. Each mobile radio that is programmed to access the ~~state~~ statewide interoperable radio system network must be registered with the division of state radio and assigned a unit number. ~~A one-time fee of ten dollars for registering and assigning unit numbers must be paid to the director on all newly added radios by the appropriate governmental entity approved by the statewide interoperability executive committee. Agencies with registered radios must validate assigned unit numbers annually.~~ The chief information officer shall establish a process to register and audit users of the statewide interoperable radio network.

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<sup>5</sup> Section 37-17.3-03 was also amended by section 3 of House Bill No. 1435, chapter 293.

2. The information technology department may provide a state cost-share for each radio purchased under this section. The state cost-share for each radio is one thousand five hundred dollars unless the cost of the radio is less than one thousand five hundred dollars in which case the state cost-share is the cost of the radio.

Approved May 1, 2019

Filed May 2, 2019

**CHAPTER 22**

**HOUSE BILL NO. 1022**

(Appropriations Committee)

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

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

**SECTION 1. 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 commission on legal counsel for indigents for the purpose of defraying the expenses of the commission on legal counsel for indigents, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Commission on legal counsel for indigents	\$19,903,623	\$471,039	\$20,374,662
Total all funds	\$19,903,623	\$471,039	\$20,374,662
Less estimated income	<u>1,919,747</u>	<u>70,288</u>	<u>1,990,035</u>
Total general fund	\$17,983,876	\$400,751	\$18,384,627
Full-time equivalent positions	40.00	0.00	40.00

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Pipeline protest trial costs	\$1,027,000	\$0
Total other funds	\$1,027,000	\$0

**SECTION 3. SALARY EQUITY FUNDING.** The estimated income line item in section 1 of this Act includes \$60,000 that may be used only to provide salary equity funding for attorney positions located in Williams County.

Approved April 26, 2019

Filed April 26, 2019

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

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota racing 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 other income, to the North Dakota racing commission for the purpose of defraying the expenses of the North Dakota racing commission, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Racing commission	\$542,178	\$22,859	\$565,037
Total all funds	\$542,178	\$22,859	\$565,037
Less estimated income	162,557	3,408	165,965
Total general fund	\$379,621	\$19,451	\$399,072
Full-time equivalent positions	2.00	0.00	2.00

Approved April 22, 2019

Filed April 23, 2019

**CHAPTER 24**

**HOUSE BILL NO. 1024**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of environmental quality; to create and enact a new section to chapter 23.1-12 and chapter 23.1-16 of the North Dakota Century Code, relating to boiler inspections and the petroleum tank release compensation fund; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05, 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18, 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27, 23.1-12-28, 23.1-12-29, 23.1-12-30, and 23.1-16-13 of the North Dakota Century Code, relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of the North Dakota Century Code, relating to boiler inspections; to provide for a report; to provide an effective date; and to provide a contingent expiration date.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of environmental quality for the purpose of defraying the expenses of the department of environmental quality, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$27,040,544	\$3,546,814	\$30,587,358
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$9,002,825	\$58,714,496
Less estimated income	<u>38,987,520</u>	<u>7,246,054</u>	<u>46,233,574</u>
Total general fund	\$10,724,151	\$1,756,771	\$12,480,922
Full-time equivalent positions	152.50	13.00	165.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Environmental protection agency lawsuit	\$500,000	\$0
Air pollution program equipment	0	<u>1,040,000</u>
Total estimated income	\$500,000	\$1,040,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on

the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item included in section 1 of this Act includes \$250,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the environment and rangeland protection fund, for the biennium beginning July 1, 2019, and ending June 30, 2021. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

**SECTION 4. STATE FIRE AND TORNADO FUND.** The estimated income line item included in section 1 of this Act includes \$882,249, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the state fire and tornado fund for the boiler inspection program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. ESTIMATED INCOME - PETROLEUM RELEASE COMPENSATION FUND.** The estimated income line item included in section 1 of this Act includes \$297,217, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the petroleum release compensation fund for expenses related to the petroleum tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 6. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ONE-TIME FUNDING - FEDERAL PROGRAM SUPREMACY.** The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the strategic investment and improvements fund for one-time funding of air pollution program equipment related to the establishment of federal program supremacy, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 7. FUNDING - FEDERAL PROGRAM SUPREMACY.** The amount of \$1,056,767 from the general fund and eight full-time equivalent positions, related to the state assuming primacy over the quad O and quad Oa federal air pollution programs, included in section 1 of this Act are effective July 1, 2020.

**SECTION 8. AMENDMENT.** Section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-02. Definitions. (Contingent effective date - [See note](#))**

As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means, in the case of corrective action expenditures, the owner, operator, landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials, and only that person is receiving reimbursement from the fund.
2. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation board.
4. "Commissioner" means the insurance commissioner.
5. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any

remedial emergency measures. The term does not include the repair or replacement of equipment or preconstructed property.

- ~~6-4.~~ "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- ~~7-5.~~ "Department" means the department of environmental quality.
- ~~8-6.~~ "Fund" means the petroleum release compensation fund.
- ~~9-7.~~ "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.
- ~~10-8.~~ "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~11-9.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~12-10.~~ "Petroleum" means any of the following:
- a. Gasoline and petroleum products as defined in chapter 23.1-13.
  - b. Constituents of gasoline and fuel oil under subdivision a.
  - c. Oil sludge and oil refuse.
- ~~13-11.~~ "Portable tank" means a storage tank along with its piping and wiring that is not stationary or affixed, including a tank that is on skids.
- ~~14-12.~~ "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
- ~~15-13.~~ "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:
- a. Tanks owned by the federal government.
  - b. Tanks used for the transportation of petroleum.
  - c. A pipeline facility, including gathering lines:
    - (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
    - (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
    - (3) Regulated under state laws comparable to the provisions of law in paragraph 1 or 2, if the facility is an interstate pipeline facility.

- d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.
- e. A tank used for storing heating oil for consumptive use on the premises where stored.
- f. A surface impoundment, pit, pond, or lagoon.
- g. A flowthrough process tank.
- h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
- i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.
- j. A tank used for the storage of propane.
- k. A tank used to fuel rail locomotives or surface coal mining equipment.
- l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
- m. A portable tank.
- n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.

46-14. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.

47-15. "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 9. AMENDMENT.** Section 23.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-04. Administration of fund - Staff. (Contingent effective date - [See note](#))**

The administratordepartment shall administer the fund according to this chapter. The administratordepartment shall convene the board as 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 administratordepartment regarding the administration of the fund, the fund's general



operations, and to hear and decide denials of claims by the ~~administrator~~department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~department 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~~department 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~~department. The claimant or the ~~administrator~~department may appeal the board's decision to the ~~commissioner~~. The decision of the ~~commissioner~~ may be appealed under chapter 28-32.

**SECTION 10. AMENDMENT.** Section 23.1-12-05 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-05. Adoption of rules. (Contingent effective date - [See note](#))**

The ~~administrator~~department shall adopt rules regarding 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, 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~~department, and any other rules as may be appropriate to administer this chapter.

**SECTION 11. AMENDMENT.** Section 23.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-06. Release discovery. (Contingent effective date - [See note](#))**

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 12. AMENDMENT.** Section 23.1-12-10 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-10. Providing of information. (Contingent effective date - [See note](#))**

A person ~~the administrator or~~ the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or a person that 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 which is relevant to the release.

**SECTION 13. AMENDMENT.** Section 23.1-12-11 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-11. Examination of records. (Contingent effective date - [See note](#))**

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 that has a duty to provide information to the ~~administrator or~~ the department under section 23.1-12-10; and

2. Enter upon public or private property to take action authorized by this section, including obtaining information from a person that has a duty to provide the information under section 23.1-12-10, conducting surveys and investigations, and taking corrective action.

**SECTION 14. AMENDMENT.** Section 23.1-12-14 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-14. Other remedies. (Contingent effective date - [See note](#))**

This chapter does not limit the powers of the ~~administrator~~ or department, or 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 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 23.1-12-15 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-15. Revenue to the fund. (Contingent effective date - [See note](#))**

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any ~~registration~~ fees collected under section 23.1-12-17;
2. Any money recovered by the fund under section 23.1-12-23, 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~~department 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 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-17. Registration fee. (Contingent effective date - [See note](#))**

1. ~~An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance 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. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars. Upon the recommendation and approval of the petroleum tank release compensation fund board, the department shall classify tanks with respect to degree of hazard, determine the risks of each classification, and fix the registration fee for each classification at a rate sufficient to provide for:~~

- a. The payment of the expenses of administration of the fund;
  - b. The reimbursement for corrective action provided under this chapter; and
  - c. The maintenance by the fund of adequate reserves and surplus so the fund may be kept solvent at all times.
2. The department shall establish the schedule of registration fees by rules adopted in accordance with chapter 28-32.
- 2-3. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
  - 3-4. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the ~~commissioner~~department along with the application for registration with the fund. If the ~~commissioner~~department rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
  - 4-5. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
  - 5-6. The registration fees collected under this section must be paid to the ~~fund administrator~~department for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
  - 6-7. If a registration payment is not received within sixty days of July first by the ~~commissioner~~department, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

**SECTION 17.** A new section to chapter 23.1-12 of the North Dakota Century Code is created and enacted as follows:

**Registration fees before adoption of rules.**

Until the department adopts rules establishing a schedule of registration fees under section 23.1-12-17, registration fees must comply with this section. 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 the person. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance 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. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.

**SECTION 18. AMENDMENT.** Section 23.1-12-18 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-18. Reimbursement for corrective action. (Contingent effective date - [See note](#))**

1. The ~~administrator~~department 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~~department determines that:
  - 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, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
  - b. The department was given notice of the release as required by federal and state law;
  - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
  - 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 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~~director of the ~~department~~ or the ~~commissioner's~~department's agent has participated. The settlement must be reviewed and approved by the ~~commissioner~~director of the department.
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 attorney's 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, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any moneys 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 23.1-12-19 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-19. Application for reimbursement. (Contingent effective date - [See note](#))**

An owner or operator that is a first-party claimant and that proposes to take corrective action or has undertaken corrective action in response to a release, the time of the release being unknown, may apply to the ~~administrator~~department for partial or full reimbursement under section 23.1-12-18. 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 23.1-12-20 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-20. ~~Administrator~~Department to determine costs. (Contingent effective date - [See note](#))**

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the ~~administrator~~department 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 23.1-12-23 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-23. Recovery of expenses. (Contingent effective date - [See note](#))**

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-12-18, 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~~department 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 22. AMENDMENT.** Section 23.1-12-24 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - [See note](#))**

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 themay pay the department's~~ corrective actions costs, 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 23. AMENDMENT.** Section 23.1-12-25 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-25. Coordination of benefits. (Contingent effective date - [See note](#))**

If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~department 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 24. AMENDMENT.** Section 23.1-12-26 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-26. Third-party damages - Participation in actions and review of settlements. (Contingent effective date - [See note](#))**

1. An owner or operator sued for damages resulting from a release shall notify the ~~administrator~~department within fourteen days of being served with a summons and complaint. The owner or operator also shall advise the ~~administrator~~department if any insurer is defending the owner or operator and provide to the ~~administrator~~department the name of that insurer.

2. An owner or operator that, before litigation, enters negotiations with a third party that claims to have been damaged by a release, or that receives a demand for payment of damages to a third party that claims to have been damaged by a release, shall notify the administratordepartment within fourteen days of the demand or the negotiations.
3. The administratordepartment and the board shall review the conduct of any litigation or negotiation. The administratordepartment 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 administratordepartment 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 25. AMENDMENT.** Section 23.1-12-27 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-27. Third-party damages - Documentation. (Contingent effective date - See note)**

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.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and supporting documents required by the administratordepartment.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and supporting documents required by the administratordepartment.
4. The administratordepartment 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 to be submitted to the administratordepartment. The administratordepartment may require a third party that claims property damage to permit a property appraiser or claims adjuster retained by the administratordepartment to inspect the property and report to the administratordepartment.
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 registered by the fund.
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, 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 23.1-12-18.

8. A third party may not bring an action against an 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 a corrective action plan approved by the department, the department shall determine whether the release 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 26. AMENDMENT.** Section 23.1-12-28 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-28. Matching federal funds. (Contingent effective date - [See note](#))**

The ~~administrator~~department 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~~department and the board determine the allowance appropriate.

**SECTION 27. AMENDMENT.** Section 23.1-12-29 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-29. Fund appropriations. (Contingent effective date - [See note](#))**

Money in the fund is continuously appropriated to the ~~administrator~~department for the purpose of making reimbursements under this chapter.

**SECTION 28. AMENDMENT.** Section 23.1-12-30 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-12-30. Investment of fund. (Contingent effective date - [See note](#))**

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of any risk to be paid by the fund. The ~~administrator~~department 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.

**SECTION 29.** Chapter 23.1-16 of the North Dakota Century Code is created and enacted as follows:

**23.1-16-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to the boiler by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves.



2. "Department" means the department of environmental quality.

**23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.**

The department shall employ a chief boiler inspector and deputy inspectors. The chief boiler inspector has jurisdiction over all boilers in this state except as otherwise provided.

**23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.**

1. An individual is not eligible to the office of chief boiler inspector unless that individual:
  - a. Has had at the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high-pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the department.
  - b. Holds a commission issued by the national board of boiler and pressure vessel inspectors or obtains the commission within one year after the date of appointment by the department.
  - c. Is not directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
2. The department shall establish qualifications for a deputy inspector which are not inconsistent with the requirements of the position.

**23.1-16-04. Powers and duties of chief boiler inspector.**

1. The chief boiler inspector shall:
  - a. Keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last-recorded internal and external inspection of boilers to which this chapter applies.
  - b. Cooperate and assist in loss prevention programs sponsored by the department.
2. The chief boiler inspector may delegate powers and duties to any deputy inspector or special inspector.

**23.1-16-05. General requirement.**

Every boiler in this state must be constructed, installed, and maintained according to rules adopted to implement this chapter.

**23.1-16-06. Exempt boilers - Inspection of exempt boilers.**

This chapter does not apply to:

1. Any boiler subject to federal inspection or under federal control.

2. Any boiler located on a farm and used solely for agricultural purposes.
3. Any heating boiler located in a private residence or in an apartment house of less than six family units.
4. Any hot water supply boiler not exceeding the following limitations:
  - a. Input of two hundred thousand British thermal units per hour.
  - b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals] gauge.
  - c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
5. Any portable steam cleaner commonly used in a garage.
6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby, not for commercial use, having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which is properly equipped with a safety valve, water level indicator, and pressure gauge.
7. Any electric boiler used as an integral part of an espresso coffee machine, provided that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals] pressure, and is constructed, approved, or certified to the American society of mechanical engineers code or to other national or international standards.

### **23.1-16-07. 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 department.
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 when 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 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 for being out of service, 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 online analysers, which 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. If an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

### **23.1-16-08. Special inspector.**

1. Upon written request of an employer, the department may appoint as a special inspector an inspector in the employ of:
  - a. An insurance company authorized to insure boilers in this state against loss from explosion;
  - b. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
  - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency.
2. An individual may not be appointed as a special inspector unless that individual has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.
3. An inspection performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the department in the time, manner, and form as prescribed by the department.
4. If a complete report is not filed by the special inspector's employer with the department within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless an extension of time is granted by the chief boiler inspector. The special inspector's employer must pay the inspection fees as required by section 23.1-16-09 for a special inspection.
5. The chief boiler inspector may inspect any boiler to which a special inspection applies.
6. The department may, for cause, suspend or revoke the appointment of any special inspector.

### **23.1-16-09. Inspection and certificate fees.**

1. Upon completion of inspection, the owner or user of a boiler shall pay to the department fees or a combination of inspection and certificate fees. The department shall determine the inspection fees. Certificate fees are determined by section 23.1-16-10. The department shall determine and annually may 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.

2. Not more than two hundred dollars may be charged or collected for any one inspection of a boiler, 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 five hundred dollars per day or three hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the department.
3. The annual fee for the issuance of a reciprocal commission card for a special inspector is forty dollars and the annual fee for the issuance of a welder-qualified card is twenty dollars.
4. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler operating license is twenty-five dollars.
5. A hobby boiler operating license issued under this section is valid for six years.

#### **23.1-16-10. Certificate of inspection - Certificate to be posted.**

The department 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 department shall charge a fee of twenty dollars per year for each year that a certificate is valid, or part of a year thereof, for each certificate of inspection issued as the result of inspections authorized under sections 23.1-16-07 and 23.1-16-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the department. A certificate may not 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. A certificate is not valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 23.1-16-07, and no more than twelve months for other power boilers, twelve 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.

#### **23.1-16-11. Certificate of inspection required - Penalty.**

A person may not operate a boiler in this state without a valid certificate of inspection. A violation of this section is a class A misdemeanor on the part of the owner, user, or operator of the boiler.

#### **23.1-16-12. Manufacturer's data report.**

The boiler manufacturer shall provide the department with a manufacturer's data report. When signed by an authorized inspector, this data sheet together with the stamp on the boiler is the record denoting the boiler has been constructed in accordance with the rules adopted to implement this chapter.

#### **23.1-16-13. Disposition of funds.**

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections.

### **23.1-16-14. Rules - Penalty for violation - Hearing.**

1. The department shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this chapter.
2. The department shall adopt rules for the licensing of operators of hobby boilers used during parades, exhibitions, and threshing shows where the public is invited.
3. A fee must be charged for an operating license, for a license renewal, and for an examination conducted to determine minimum competence. Individuals operating hobby boilers within this state as of July 1, 2007, are considered acceptable for a license without additional training or examination. An individual who is not a resident of this state and who holds a boiler operator license or credential in another state or Canadian province is exempt from licensure as a hobby boiler operator in this state.
4. The department may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with the rules. The department shall revoke any certificate presently in force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules.
5. Any owner or user of a boiler may request a hearing before the department within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the department becomes final and is not subject to further proceedings.

**SECTION 30. AMENDMENT.** Section 23.1-16-13 of the North Dakota Century Code is amended and reenacted as follows:

### **23.1-16-13. Disposition of funds.**

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the ~~state fire and tornado~~ department of environmental quality operating fund to be used to defray the costs of boiler inspections.

**SECTION 31. REPEAL.** Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

**SECTION 32. BOILER INSPECTION PROGRAM EVALUATION - PLAN - REPORT TO LEGISLATIVE MANAGEMENT.** The department of environmental quality shall evaluate the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the legislative management regarding the plan before June 30, 2020.

**SECTION 33. EFFECTIVE DATE.** Section 30 of this Act becomes effective on July 1, 2020.

**SECTION 34. CONTINGENT EXPIRATION DATE.** Section 17 of this Act is effective until the date the legislative council receives certification from the

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department of environmental quality that rules establishing a schedule of registration fees under section 23.1-12-17 have been adopted, and after that date is ineffective.

Approved May 1, 2019

Filed May 2, 2019

**CHAPTER 25**

**HOUSE BILL NO. 1025**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of veterans' affairs; to provide for a report; and to provide an exemption.

**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 veterans' affairs for the purpose of defraying the expenses of the department of veterans' affairs, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Veterans' affairs	\$1,168,015	\$179,614	\$1,347,629
State approving agency	271,998	13,660	285,658
Grants - transportation program	1,719,520	(919,520)	800,000
Transport vans	18,600	200	18,800
Service dogs	50,000	0	50,000
Veterans' home cemetery	<u>0</u>	<u>291,500</u>	<u>291,500</u>
Total all funds	\$3,228,133	(\$434,546)	\$2,793,587
Less estimated income	2,091,571	(714,414)	1,377,157
Total general fund	\$1,136,562	\$279,868	\$1,416,430
Full-time equivalent positions	7.00	0.00	7.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Transport vans	\$18,600	\$0
Grant database enhancements	0	7,500
Temporary loan and grant position	0	140,000
Veterans' home cemetery	<u>0</u>	<u>291,500</u>
Total all funds	\$18,600	\$439,000
Less estimated income	<u>0</u>	<u>291,500</u>
Total general fund	\$18,600	\$147,500

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of veterans' affairs shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. EXEMPTION.** The amount of \$50,000 appropriated for the posttraumatic stress disorder service dogs program in section 1 of chapter 49 of the 2017 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this program are available for the program during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. ESTIMATED INCOME - VETERANS' HOME CEMETERY FUNDING.** The estimated income line item in section 1 of this Act includes \$291,500, of which \$265,000 is from federal funds and \$26,500 is from the Melvin Norgard memorial fund, for the purpose of repairing and maintaining the cemetery located on the veterans' home campus during the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item.

Approved April 26, 2019

Filed April 26, 2019



**CHAPTER 26**

**SENATE BILL NO. 2001**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the office of the governor; to create and enact a new section to chapter 54-07 of the North Dakota Century Code, relating to the Theodore Roosevelt presidential library and museum endowment fund; to amend and reenact sections 54-07-04 and 54-08-03 of the North Dakota Century Code, relating to salary of the governor and lieutenant governor; to provide a continuing appropriation; to provide for a transfer; to authorize a loan; to provide an exemption; to provide for a report to the legislative assembly; to provide for a budget section report; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the office of the governor for the purpose of defraying the expenses of the office of the governor, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$3,422,574	\$201,372	\$3,623,946
Operating expenses	298,456	209,792	508,248
Contingencies	10,000	0	10,000
Roughrider awards	10,800	0	10,800
Governor's salary	265,928	8,184	274,112
Transition in	0	15,000	15,000
Transition out	0	50,000	50,000
Total general fund	\$4,007,758	\$484,348	\$4,492,106
Full-time equivalent positions	18.00	0.00	18.00

**SECTION 2. GOVERNOR'S OFFICE ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Transition costs	\$0	\$65,000
Boards and commissions project	0	139,808
Total general fund	\$0	\$204,808

The 2019-21 one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The governor's office shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. ADDITIONAL INCOME - APPROPRIATION - GOVERNOR'S OFFICE - BUDGET SECTION REPORT.** In addition to the amounts appropriated in section 1 of this Act, there is appropriated to the governor's office, any additional income from federal or other funds which may become available to the governor's office, for the biennium beginning July 1, 2019, and ending June 30, 2021. Any funds received under this section must be used for the specific purpose intended for the funds or transferred to the appropriate state agency or institution. Upon the receipt of funds under this section, the governor's office shall provide a report to the budget section regarding the source, amount, and purpose of the funds received.

**SECTION 4. AMENDMENT.** Section 54-07-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-07-04. Salary of governor.**

The annual salary of the governor is ~~one hundred twenty-nine thousand ninety-one~~ one hundred thirty-five thousand three hundred sixty-four dollars through June 30, 2016~~2020~~, and ~~one hundred thirty-two thousand nine hundred sixty-four~~ one hundred thirty-eight thousand seven hundred forty-eight dollars thereafter.

**SECTION 5.** A new section to chapter 54-07 of the North Dakota Century Code is created and enacted as follows:

**Theodore Roosevelt presidential library and museum endowment fund - Continuing appropriation - Budget section report.**

There is created in the state treasury the Theodore Roosevelt presidential library and museum endowment fund. The governor may provide for the fund to be invested under the supervision of the board of university and school lands. The interest and earnings of the fund are appropriated to the governor on a continuing basis to pay interest expenses on a loan from the Bank of North Dakota and to provide grants pursuant to this section. The governor may provide grants to a private entity subject to the following:

1. The private entity has certified to the governor the entity has received the sum of one hundred million dollars in cash donations and binding pledged donations for the construction of a presidential library and museum in North Dakota and for grants to affected entities;
2. The governor has entered an agreement with the private entity in subsection 1 which includes the following provisions:
  - a. The grant funds will be spent only for operating and maintenance costs of the presidential library located in North Dakota;
  - b. Any unused grant funds will be returned to the state and deposited in the general fund if the presidential library has not been constructed within the period of time specified in the agreement or if the library ceases operations;
  - c. The private entity agrees to donate ten million dollars from the one hundred million dollars identified in subsection 1 to a higher education institution foundation in North Dakota for the purpose of creating an endowment to digitize documents relating to Theodore Roosevelt and for the creation of a Theodore Roosevelt conservation scholars program and related academic mission at a North Dakota higher education institution in collaboration with the private entity; and

- d. The private entity agrees to donate three hundred thousand dollars to a city in North Dakota for prior costs incurred related to planning for a presidential library;
3. The governor provides a report to the budget section which includes copies of the documentation received for the certification provided in subsection 1; and
4. The governor provides a report to the budget section within thirty days of applying for the loan authorized in section 8 of this Act which includes all completed loan application documents.

**SECTION 6. AMENDMENT.** Section 54-08-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-08-03. Salary of lieutenant governor.**

The annual salary of the lieutenant governor is ~~one hundred thousand two hundred fifteen~~ one hundred five thousand two hundred eighty-five dollars through June 30, ~~2016~~2020, and ~~one hundred three thousand two hundred twenty-one~~ one hundred seven thousand nine hundred seventeen dollars thereafter.

**SECTION 7. APPROPRIATION - TRANSFER.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$15,000,000, or so much of the sum as may be necessary, which the director of the office of management and budget shall transfer to the Theodore Roosevelt presidential library and museum endowment fund during the period beginning with the effective date of this Act, and ending June 30, 2019. Of the funds appropriated in this section, \$9,800,000 is from unexpended funds previously appropriated by the legislative assembly for grants related to the Theodore Roosevelt presidential library.

**SECTION 8. LOAN AUTHORIZATION.** The governor may obtain a loan from the Bank of North Dakota in an amount not to exceed \$35,000,000. The term of the loan may not exceed six years and the interest rate must be set at the prevailing interest rate charged by the Bank of North Dakota to governmental entities. The governor shall repay the loan authorized in this section from funds appropriated by the legislative assembly. The governor shall deposit the proceeds of the loan in the Theodore Roosevelt presidential library and museum endowment fund.

**SECTION 9. EMERGENCY.** Sections 5, 7, and 8 of this Act are declared to be an emergency measure.

Approved April 26, 2019

Filed April 26, 2019

**CHAPTER 27****SENATE BILL NO. 2002**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the office of the secretary of state and public printing; to amend and reenact sections 54-09-05, 54-09-08, and 54-09-11 of the North Dakota Century Code, relating to the salary of the secretary of state, the general services operating fund, and fees charged by the secretary of state; to authorize a line item transfer during the 2017-19 biennium; to provide a report to the legislative assembly; to provide exemptions; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the secretary of state for the purpose of defraying the expenses of the secretary of state and public printing, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

## Subdivision 1.

## SECRETARY OF STATE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,652,764	\$325,362	\$4,978,126
Operating expenses	2,711,018	298,535	3,009,553
Petition review	8,000	0	8,000
Election reform	1,192,655	11,609,092	12,801,747
Total all funds	\$8,564,437	\$12,232,989	\$20,797,426
Less estimated income	<u>3,044,155</u>	<u>12,387,486</u>	<u>15,431,641</u>
Total general fund	\$5,520,282	(\$154,497)	\$5,365,785
Full-time equivalent positions	32.00	0.00	32.00

## Subdivision 2.

## SECRETARY OF STATE - PUBLIC PRINTING

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Public printing	\$288,450	(\$31,172)	\$257,278
Total general fund	\$288,450	(\$31,172)	\$257,278

## Subdivision 3.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$5,808,732	(\$185,669)	\$5,623,063

Grand total special funds	<u>3,044,155</u>	<u>12,387,486</u>	<u>15,431,641</u>
Grand total all funds	\$8,852,887	\$12,201,817	\$21,054,704

**SECTION 2. ONE-TIME FUNDING - REPORT.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act.

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Electronic payment processing system	\$194,000	\$0
Voting system and e-poll books	0	<u>11,200,000</u>
Total special funds	\$194,000	\$11,200,000

The 2019-21 biennium one-time funding amounts are not part of the entity's base budget for the 2019-21 biennium. The secretary of state shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - VOTING SYSTEM AND E-POLL BOOKS.** The estimated income line item in section 1 of this Act includes the sum of \$8,200,000 from the strategic investment and improvements fund for the statewide voting system and e-poll book project for the period beginning with the effective date of this Act, and ending June 31, 2021.

**SECTION 4. EXEMPTION - LINE ITEM TRANSFER - 2017-19 BIENNIUM.** Notwithstanding section 54-16-06, the secretary of state may transfer up to \$140,000 of special funds from the operating expenses line item to the salaries and wages line item contained in section 1 of chapter 2 of the 2017 Session Laws.

<sup>6</sup> **SECTION 5. AMENDMENT.** Section 54-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-05. Salary of secretary of state.**

The annual salary of the secretary of state is one hundred ~~two~~<sup>seven</sup> thousand ~~six~~<sup>eight</sup> hundred ~~eighty-nine~~<sup>eighty-five</sup> dollars through June 30, ~~2016~~<sup>2019</sup>, and one hundred ~~five~~<sup>ten</sup> thousand ~~seven~~<sup>five</sup> hundred ~~seventy~~<sup>eighty-two</sup> dollars thereafter.

**SECTION 6. AMENDMENT.** Section 54-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-08. Secretary of state's general services operating fund.**

The secretary of state's general services operating fund is a special fund in the state treasury. Moneys in the fund are to be used pursuant to legislative appropriations for the provision of services under section 16.1-02-15, subsection 4 of section 41-09-94, subsection 5 of section 41-09-96, subsection 7 of section 54-09-04, and sections 10-35-33, 54-09-10, and 54-09-11. ~~At the close of each biennium, the secretary of state shall transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars to the general fund.~~

**SECTION 7. AMENDMENT.** Section 54-09-11 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>6</sup> Section 54-09-05 was also amended by section 24 of Senate Bill No. 2015, chapter 40.

**54-09-11. Fees.**

1. The secretary of state shall establish fees 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. A fee may not be required for furnishing information on a verbal request pursuant to subsection 3 of section 54-09-10, and the fee for furnishing a certificate under subsection 3 of section 54-09-10 is fifteen dollars.
3. ~~The secretary of state shall establish the fee for furnishing lists from the central indexing system based on actual costs to produce the lists for distribution.~~For preparing a listing or compilation of any information recorded or filed in the office of the secretary of state, the secretary of state may charge a fee of forty dollars for each record requested. The secretary of state shall provide the requested information in an electronic format, unless the secretary of state agrees to a request to provide the information in a different format. If the secretary of state provides the requested information in a paper format, the secretary of state may charge an additional fee of fifty cents per page.
4. Fees collected by the secretary of state under this section, under subsection 4 of section 41-09-94, and subsection 5 of section 41-09-96, and ~~twenty~~twenty dollars from each filing entered into the central indexing system must be deposited in the secretary of state's general services operating fund. Fees collected by the secretary of state under this section ~~must~~may be used for the programming and maintenance of the ~~central indexing system~~information technology systems administered by the secretary of state.
5. ~~The secretary of state shall pay ten dollars to the county recorder of the county of residence for the first debtor listed on each statement filed pursuant to section 35-13-02, 35-17-04, 35-20-16, 35-30-02, 35-31-02, or 41-09-72. The payment must be made monthly from the general fund in the state treasury.~~

**SECTION 8. EXEMPTION - TECHNOLOGY PROJECT.** The \$3,050,000 general fund appropriation for the technology project in the operating expenses line item in subdivision 1 of section 1 of chapter 36 of the 2015 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation may continue and be expended during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 9. EMERGENCY.** The election reform line in section 1, section 3, and section 4 of this Act are declared to be an emergency measure.

Approved April 18, 2019

Filed April 19, 2019

## CHAPTER 28

### SENATE BILL NO. 2003

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the attorney general; to amend and reenact sections 31-01-16, 53-12.1-09, and 54-12-11 of the North Dakota Century Code, relating to prosecution witness fees, transfers from the lottery operating fund to the multijurisdictional drug task force grant fund, and the salary of the attorney general; to provide an exemption; to provide a statement of legislative intent; and to provide for a report.

#### 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, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$41,179,043	\$4,775,938	\$45,954,981
Operating expenses	15,977,281	411,365	16,388,646
Capital assets	2,742,372	429,964	3,172,336
Grants	2,440,000	1,978,440	4,418,440
Litigation fees	150,000	0	150,000
Intellectual property attorney	426,924	15,161	442,085
Medical examinations	660,000	0	660,000
North Dakota lottery	5,336,797	(145,343)	5,191,454
Arrest and return of fugitives	10,000	0	10,000
Gaming commission	7,490	(1)	7,489
Criminal justice information sharing	3,386,645	244,476	3,631,121
Law enforcement	2,901,608	80,676	2,982,284
Human trafficking victims grants	125,000	1,275,000	1,400,000
Forensic nurse examiners grants	0	<u>250,000</u>	<u>250,000</u>
Total all funds	\$75,343,160	\$9,315,676	\$84,658,836
Less estimated income	30,647,320	8,206,920	38,854,240
Total general fund	\$44,695,840	\$1,108,756	\$45,804,596
Full-time equivalent positions	237.00	8.00	245.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
SAVIN cost-share program	\$315,000	\$0
Uniform crime reporting rewrite	280,000	0
DOS-based deposit system rewrite	100,000	0

Pipeline protest law enforcement support	200,000	0
Court-ordered payments	15,872,000	0
Forensic nurse examiner grants	150,000	0
Additional income	250,000	0
SAVIN program enhancements	500,000	0
Criminal history improvement project	0	400,000
Capital assets	0	1,851,956
Undercover vehicles	0	200,000
Finger identification system replacement project	0	316,000
Charitable gaming technology system	0	400,000
Total all funds	\$17,667,000	\$3,167,956
Total other funds	17,567,000	2,967,956
Total general fund	\$100,000	\$200,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The attorney general shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. EXEMPTION - ATTORNEY GENERAL REFUND FUND.**

Notwithstanding section 54-12-18, the attorney general may retain the balance in the attorney general refund fund which would otherwise be transferred to the general fund on June 30, 2019.

**SECTION 4. AMENDMENT.** Section 31-01-16 of the North Dakota Century Code is amended and reenacted as follows:

**31-01-16. Compensation and mileage and travel expense of witness.**

A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district court or before any other board or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases in district court, the attorney general shall pay prosecution witness fees and expenses, in an amount not to exceed twenty-five thousand dollars per county per biennium, and the commission on legal counsel for indigents shall pay witness fees and expenses for witnesses in those cases in which counsel has been provided by the commission. Prisoners may not be compensated as witnesses under this section.

**SECTION 5. AMENDMENT.** Section 53-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**53-12.1-09. Operating fund - Continuing appropriation - Authorization of disbursements - Report - Net proceeds.**

There is established within the state treasury the lottery operating fund into which must be deposited all revenue from the sale of tickets, interest received on money in the fund, and all other fees and moneys collected, less a prize on a lottery promotion, prize on a winning ticket paid by a retailer, and a retailer's commission. Except for moneys in the lottery operating fund appropriated by the legislative assembly for administrative and operating costs of the lottery under section 53-12.1-10, all other



money in the fund is continuously appropriated for the purposes specified in this section. During each regular session, the attorney general shall present a report to the appropriations committee of each house of the legislative assembly on the actual and estimated operating revenue and expenditures for the current biennium and projected operating revenue and expenditures for the subsequent biennium authorized by this section. A payment of a prize or expense or transfer of net proceeds by the lottery may be made only against the fund or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be for the following purposes:

1. Payment of a prize as the director deems appropriate to the owner of a valid, winning ticket;
2. Notwithstanding section 53-12.1-10, payment of a marketing expense that is directly offset by cosponsorship funds collected;
3. Payment of a gaming system or related service expense, retailer record and credit check fees, game group dues, and retailer commissions; and
4. Transfer of net proceeds:
  - a. Eighty thousand dollars must be transferred to the state treasurer each quarter for deposit in the gambling disorder prevention and treatment fund;
  - b. An amount for the lottery's share of a game's prize reserve pool must be transferred to the multistate lottery association;
  - c. Starting July 1, ~~2007~~2019, ~~one~~two hundred five thousand six hundred ~~twenty-five~~ dollars must be transferred to the state treasurer each quarter for deposit in the attorney general multijurisdictional drug task force grant fund; and
  - d. The balance of the net proceeds, less holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

**SECTION 6. AMENDMENT.** Section 54-12-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-12-11. Salary of attorney general.**

The annual salary of the attorney general is ~~one hundred fifty-two thousand four hundred thirty-six dollars through June 30, 2016~~ one hundred fifty-nine thousand four hundred nine dollars through June 30, 2020, and ~~one hundred fifty-seven thousand nine dollars~~ one hundred sixty-three thousand three hundred ninety-four dollars thereafter.

**SECTION 7. ADDITIONAL INCOME - APPROPRIATION - REPORT.** In addition to the amounts appropriated to the attorney general in section 1 of this Act, there is appropriated from federal or other funds, the sum of \$250,000, or so much of the sum as may be necessary, to the attorney general for the purposes of defraying the expenses of the office, for the biennium beginning July 1, 2019, and ending June 30, 2021. The attorney general shall notify the office of management and budget and the legislative council of any funding made available pursuant to this section.

**SECTION 8. CRIMINAL HISTORY RECORD CHECKS - FEES.** Any individual or entity requesting a criminal history record check from the bureau of criminal investigation, as a result of legislation enacted by the sixty-sixth legislative assembly, shall pay a reasonable fee established by the attorney general to the attorney general to be deposited in the state's general fund for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 9. EXEMPTION - STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION PROGRAM.** The \$815,000 from other funds appropriated to the attorney general for the statewide automated victim information and notification system as contained in sections 1 and 8 of chapter 3 of the 2017 Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general for the statewide automated victim information and notification program, during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 10. HUMAN TRAFFICKING VICTIMS GRANT PROGRAM - REQUIREMENTS - REPORTS.** The human trafficking victims grants line item in section 1 of this Act includes \$1,400,000 from the general fund for the purpose of providing grants to organizations involved in providing prevention and treatment services related to human trafficking victims for the biennium beginning July 1, 2019, and ending June 30, 2021. The attorney general may provide grants for the development and implementation of direct care emergency or long-term crisis services, residential care, training for law enforcement, support of advocacy services, and programs promoting positive outcomes for victims. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-seventh legislative assembly on the use of the funds received and the outcomes of its program. The attorney general shall report to the legislative management during the 2019-20 interim on the status and results of the grant program.

**SECTION 11. FORENSIC NURSE EXAMINERS GRANT PROGRAM - REPORTS.** The forensic nurse examiners grants line item in section 1 of this Act includes \$250,000 from the general fund for the purpose of providing forensic nurse examiner program grants for community-based or hospital-based sexual assault examiner programs, for the biennium beginning July 1, 2019, and ending June 30, 2021. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-seventh legislative assembly on the use of the funds received and the outcomes of its programs. The attorney general shall report to the appropriations committees of the sixty-seventh legislative assembly on the number of nurses trained, the number and location of nurses providing services related to sexual assault nurse examiner programs, and documentation of collaborative efforts to assist victims which includes nurses, the hospital or clinic, law enforcement, and state's attorneys.

**SECTION 12. ESTIMATED INCOME - CHARITABLE GAMING TECHNOLOGY SYSTEM - EXEMPTION - GAMING TAX ALLOCATION.** The estimated income line item in section 1 of this Act includes \$400,000 from the attorney general operating fund for the purpose of purchasing equipment and software for a charitable gaming technology system. Notwithstanding the provisions of section 53-06.1-12, from the deposits designated for deposit in the general fund under subsection 3 of section 53-06.1-12 in fiscal year 2020, the attorney general shall deposit \$400,000 into the attorney general operating fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 13. EXEMPTION - CONCEALED WEAPON REWRITE PROJECT.** The amount appropriated to the attorney general from the general fund for a concealed weapon rewrite project as contained in section 1 of chapter 37 of the 2015 Session Laws and continued into the 2017-19 biennium, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general for the concealed weapon rewrite project, during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 14. LEGISLATIVE INTENT - ATTORNEY SALARY EQUITY INCREASES - ATTORNEY GENERAL REFUND FUND.** It is the intent of the sixty-sixth legislative assembly that the attorney general use up to \$425,000 from moneys deposited in the attorney general refund fund relating to an April 2019 lawsuit settlement of \$1,215,561 and investment earnings on the settlement amount for providing salary equity increases to attorney positions in the attorney general's office for the biennium beginning July 1, 2019, and ending June 30, 2021. It is further the intent of the legislative assembly that the remaining settlement proceeds and investment earnings on the remaining proceeds be retained in the attorney general refund fund and be used for the cost to continue the salary equity increases provided during the 2019-21 biennium during the 2021-23 and 2023-25 bienniums, subject to legislative appropriations.

**SECTION 15. ATTORNEY GENERAL - INVESTMENT OF LAWSUIT SETTLEMENT PROCEEDS - STATE INVESTMENT BOARD.** The attorney general may invest up to \$1,215,561 of lawsuit settlement proceeds received by the attorney general and deposited in the attorney general refund fund during the biennium beginning July 1, 2017, and ending June 30, 2019, under the supervision of the state investment board for the period beginning July 1, 2019, and ending June 30, 2025.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 29

### SENATE BILL NO. 2004

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state auditor; to amend and reenact sections 54-10-01 and 54-10-10 of the North Dakota Century Code, relating to the powers and duties of the state auditor and the salary of the state auditor; to provide for a report; 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 auditor for the purpose of defraying the expenses of the state auditor, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,767,312	\$900,906	\$12,668,218
Operating expenses	1,142,783	19,037	1,161,820
Capital assets	0	16,000	16,000
Information technology consultants	<u>0</u>	<u>450,000</u>	<u>450,000</u>
Total all funds	\$12,910,095	\$1,385,943	\$14,296,038
Less estimated income	3,411,487	761,691	4,173,178
Total general fund	\$9,498,608	\$624,252	\$10,122,860
Full-time equivalent positions	56.00	2.00	58.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Copier replacement	\$0	<u>\$16,000</u>
Total general fund	\$0	\$16,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The state auditor shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**7 SECTION 3. AMENDMENT.** Section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-10-01. Powers and duties of state auditor.**

The state auditor shall:

- <sup>7</sup> Section 54-10-01 was also amended by section 1 of House Bill No. 1077, chapter 432.

1. Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of the state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.
2. 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. Except for the annual audit of the North Dakota lottery required by section 53-12.1-03, 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 may not contract for work required by the federal government without the prior approval of the legislative audit and fiscal review committee. 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. State agencies must use nongeneral fund moneys to pay for audits performed by the state auditor. If nongeneral fund moneys are not available, the agency may, upon approval of the legislative assembly, or the budget section if the legislative assembly is not in session, use general fund moneys to pay for audits performed by the state auditor. The budget section reviews and approvals must comply with the new section to chapter 54-35 of the North Dakota Century Code created by section 15 of Senate Bill No. 2055 as adopted by the sixty-sixth legislative assembly. Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.
3. Be vested with the authority to determine whether to audit the International Peace Garden at the request of the board of directors of the International Peace Garden.
4. Perform or provide for performance audits of state agencies, or the agencies' blended component units or discreetly presented component units, as determined necessary by ~~the state auditor or legislative assembly;~~ the legislative audit and fiscal review committee; or the state auditor, subject to approval by the legislative audit and fiscal review committee. A performance audit must be done in accordance with generally accepted auditing standards applicable to performance audits. The state auditor may not hire a consultant to assist with conducting a performance audit of a state agency without the prior approval of the legislative audit and fiscal review committee. The state auditor shall notify an agency of the need for a consultant before requesting approval by the legislative audit and fiscal review committee. The agency that is audited shall pay for the cost of any consultant approved.
5. For the audits and reviews the state auditor is authorized to perform or provide for under this section, the audit or review may be provided for by contract with a private certified or licensed public accountant or other qualified professional. If the state auditor determines that the audit or review will be done pursuant to contract, the state auditor, except for occupational or professional boards, shall execute the contract, and any executive branch agency, including higher education institutions, shall pay the fees of the contractor.

6. Be responsible for the above functions and report thereon to the governor and the secretary of state in accordance with section 54-06-04 or more often as circumstances may require.
7. Perform all other duties as prescribed by law.

**SECTION 4. AMENDMENT.** Section 54-10-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-10. Salary of state auditor.**

The annual salary of the state auditor is ~~one hundred two thousand six hundred eighty-nine dollars through June 30, 2016, and one hundred five thousand seven hundred seventy dollars thereafter~~one hundred seven thousand eight hundred eighty-five dollars through June 30, 2020, and one hundred ten thousand five hundred eighty-two dollars thereafter.

**SECTION 5. AUDIT STAFF UTILIZATION - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The state auditor shall monitor the number of audit staff hours dedicated to financial audits, performance audits, mineral resource audits, federal single audit procedures, comprehensive annual financial report procedures, fraud investigation, local government audits, and audits of the institutions of higher education, including financial audits and performance audits. The state auditor shall report to the appropriations committees of the sixty-seventh legislative assembly regarding the number of audit staff hours dedicated to each of these audit functions and any other functions of the state auditor's office during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 6. EMERGENCY.** The sum of \$16,000 provided from the general fund for copier replacement appropriated in section 1 of this Act is declared to be an emergency measure.

Approved May 2, 2019

Filed May 2, 2019

**CHAPTER 30**

**SENATE BILL NO. 2005**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state treasurer; to amend and reenact section 54-11-13 of the North Dakota Century Code, relating to the salary of the state treasurer; and to provide for a report.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from the strategic investment and improvements fund to the state treasurer for the purpose of defraying the expenses of the state treasurer, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,316,139	\$67,002	\$1,383,141
Operating expenses	251,260	(24,031)	227,229
Coal severance payments	<u>180,000</u>	<u>(9,000)</u>	<u>171,000</u>
Total all funds	\$1,747,399	\$33,971	\$1,781,370
Less estimated income	<u>0</u>	<u>35,000</u>	<u>35,000</u>
Total general fund	\$1,747,399	(\$1,092)	\$1,746,370
Full-time equivalent positions	7.00	0.00	7.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Information technology costs	<u>\$0</u>	<u>\$35,000</u>
Total special funds	\$0	\$35,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The state treasurer shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The operating expenses line item and the estimated income line item in section 1 of this Act include \$35,000 from the strategic investment and improvements fund for information technology costs.

**SECTION 4. AMENDMENT.** Section 54-11-13 of the North Dakota Century Code is amended and reenacted as follows:

**54-11-13. Salary of state treasurer.**

The annual salary of the state treasurer is ninety-six thousand nine hundred seventy-two dollars through June 30, 2016, and ninety-nine thousand eight hundred eighty-one dollars thereafter one hundred seven thousand eight hundred eighty-five dollars through June 30, 2020, and one hundred ten thousand five hundred eighty-two dollars thereafter.

Approved May 1, 2019

Filed May 2, 2019



**CHAPTER 31**

**SENATE BILL NO. 2006**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the office of the tax commissioner and for payment of state reimbursement under the homestead tax credit and disabled veterans' credit; to amend and reenact section 57-01-04 of the North Dakota Century Code, relating to the salary of the state tax commissioner; to provide for a transfer; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the tax commissioner for the purpose of defraying the expenses of the tax commissioner and paying the state reimbursement under the homestead tax credit and disabled veterans' tax credit for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$21,724,004	\$1,143,952	\$22,867,956
Operating expenses	6,749,295	363,165	7,112,460
Capital assets	6,000	0	6,000
Homestead tax credit	14,800,000	1,000,000	15,800,000
Disabled veterans' tax credit	<u>8,110,200</u>	<u>300,000</u>	<u>8,410,200</u>
Total all funds	\$51,389,499	\$2,807,117	\$54,196,616
Less estimated income	<u>125,000</u>	<u>0</u>	<u>125,000</u>
Total general fund	\$51,264,499	\$2,807,117	\$54,071,616
Full-time equivalent positions	133.00	(10.00)	123.00

**SECTION 2. APPROPRIATION - 2017-19 BIENNIUM.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$590,000, or so much of the sum as may be necessary, to the tax commissioner for the homestead tax credit program and the disabled veterans' tax credit program, for the period beginning with the effective date of this Act, and ending June 30, 2019.

**SECTION 3. LINE ITEM TRANSFERS.** The state tax commissioner may transfer funds between the homestead tax credit and disabled veterans' tax credit line items in section 1 of this Act if one line item does not have sufficient funds available for state reimbursement of eligible tax credits. The state tax commissioner shall notify the office of management and budget and the legislative council of any transfers made pursuant to this section.

**SECTION 4. MOTOR VEHICLE FUEL TAX REVENUE TRANSFER.** There is transferred to the general fund in the state treasury out of motor vehicle fuel tax revenue collected pursuant to section 57-43.1-02, the sum of \$1,991,024 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 for the biennium beginning July 1, 2019, and ending June 30, 2021.

**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 ~~one hundred eleven thousand four hundred forty eight dollars through June 30, 2016, and one hundred fourteen thousand seven hundred ninety one dollars thereafter~~one hundred seventeen thousand eighty-seven dollars through June 30, 2020, and one hundred twenty thousand fourteen dollars thereafter.

**SECTION 6. EMERGENCY.** Section 2 of this Act is declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

**CHAPTER 32**

**SENATE BILL NO. 2007**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of labor and human rights; and to provide for a report to the legislative assembly.

**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 labor and human rights for the purpose of defraying the expenses of the department of labor and human rights, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,414,984	\$60,781	\$2,475,765
Operating expenses	<u>328,918</u>	<u>71,167</u>	<u>400,085</u>
Total all funds	\$2,743,902	\$131,948	\$2,875,850
Less estimated income	<u>439,916</u>	<u>40,765</u>	<u>480,681</u>
Total general fund	\$2,303,986	\$91,183	\$2,395,169
Full-time equivalent positions	14.00	0.00	14.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Paperless storage system	<u>\$0</u>	<u>\$69,659</u>
Total general fund	\$0	\$69,659

The 2019-21 one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of labor and human rights shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

Approved April 23, 2019

Filed April 24, 2019

**CHAPTER 33****SENATE BILL NO. 2008**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the public service commission; to amend and reenact sections 49-01-05 and 57-43.2-19 of the North Dakota Century Code, relating to the salary of the commissioners and the transfer, deposit, and distribution of funds in the highway tax distribution fund; to provide for a study; to provide for a report; and to provide for a transfer.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the public service commission for the purpose of defraying the expenses of the public service commission, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$9,197,284	\$298,276	\$9,495,560
Operating expenses	1,829,826	(66,000)	1,763,826
Capital assets	10,000	15,000	25,000
Grants	20,000	0	20,000
Abandoned mined lands contractual	6,000,000	0	6,000,000
Rail rate complaint case	900,000	0	900,000
Railroad safety program	564,668	24,350	589,018
Specialized legal services	<u>94,000</u>	<u>336,000</u>	<u>430,000</u>
Total all funds	\$18,615,778	\$607,626	\$19,223,404
Less estimated income	<u>11,985,016</u>	<u>523,460</u>	<u>12,508,476</u>
Total general fund	\$6,630,762	\$84,166	\$6,714,928
Full-time equivalent positions	45.00	(2.00)	43.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Specialized legal services	<u>\$436,000</u>	<u>\$336,000</u>
Total all funds	\$436,000	\$336,000
Total special funds	<u>436,000</u>	<u>336,000</u>
Total general fund	\$0	\$0

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The public service commission shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. TRANSFER AND REPAYMENT - BEGINNING FARMER REVOLVING LOAN FUND.** The Bank of North Dakota shall transfer from the beginning farmer revolving loan fund to the public service commission the sum of \$900,000, or so much of the sum as may be necessary, included in the estimated income line item in section 1 of this Act to pay for costs associated with a rail rate complaint case. Transfers must be made during the biennium beginning July 1, 2019, and ending June 30, 2021, upon order of the commission. If any amounts are spent pursuant to this section, the public service commission shall reimburse the beginning farmer revolving loan fund using amounts available from damages or proceeds received, net of legal fees, from a successful outcome of a rail complaint case.

**SECTION 4. APPROPRIATION - GRAIN INSOLVENCY LITIGATION.** There is appropriated from special funds derived from other income to be received from the agriculture commissioner, the sum of \$100,000, or so much of the sum as may be necessary, to the public service commission, for the purpose of continuing to provide, in consultation with the agriculture commissioner, services related to grain insolvency litigation initiated prior to July 1, 2019. The funding provided in this section is considered a one-time funding item.

**SECTION 5. AMENDMENT.** Section 49-01-05 of the North Dakota Century Code is amended and reenacted as follows:

**49-01-05. Salary of commissioners.**

The annual salary of a commissioner is one hundred ~~five~~ten thousand ~~four~~eight hundred ~~ninety-one~~twenty-nine dollars through June 30, ~~2016~~2020, and one hundred ~~eight~~thirteen thousand six hundred ~~forty-six~~ dollars thereafter. All fees received or charged by any commissioner for any act or service rendered in any official capacity must be accounted for and paid over by the commissioner monthly to the state treasurer and must be credited to the general fund of the state.

**SECTION 6. AMENDMENT.** Section 57-43.2-19 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-19. Transfer, deposit, and distribution of funds. (Effective July 1, 2015, through June 30, ~~2019~~2021)**

All taxes, license fees, penalties, and interest collected under this chapter must be transferred to the state treasurer who shall deposit moneys in a highway tax distribution fund, except all special fuels excise taxes collected on sales of diesel fuel to a railroad under section 57-43.2-03 of up to two hundred ~~eighty-five~~ninety-four thousand ~~five~~hundred nine dollars per year must be transferred to the state treasurer who shall deposit the moneys in the rail safety fund. The highway tax distribution fund must be distributed in the manner as prescribed by section 54-27-19.

**Transfer, deposit, and distribution of funds. (Effective after June 30, ~~2019~~2021)** All taxes, license fees, penalties, and interest collected under this chapter must be transferred to the state treasurer who shall deposit moneys in the highway tax distribution fund. The highway tax distribution fund must be distributed in the manner as prescribed by section 54-27-19.

**SECTION 7. RAILROAD INSPECTION STUDY.** During the 2019-20 interim, the public service commission shall study technology available to create efficiencies to reduce costs for railroad equipment and track inspections. The commission shall report its findings and any related budget recommendations to the appropriations committees of the sixty-seventh legislative assembly.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 34

### SENATE BILL NO. 2009

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the agriculture commissioner; to provide for transfers; to create and enact a new section to chapter 60-01, a new section to chapter 60-02, and a new section to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner and records confidentiality for warehousemen and grain buyers; to amend and reenact sections 4.1-01-02 and 49-02-01, subsection 1 of section 60-02-01, sections 60-02-02, 60-02-03, 60-02-04, 60-02-05.1, 60-02-07, 60-02-07.2, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-14, 60-02-17, 60-02-24, 60-02-27, 60-02-35.1, 60-02-38, 60-02-40, 60-02-41, 60-02-42, 60-02.1-01, 60-02.1-02, 60-02.1-03, 60-02.1-04, 60-02.1-06, 60-02.1-07, 60-02.1-07.1, 60-02.1-08, 60-02.1-09, 60-02.1-11, 60-02.1-16, 60-02.1-17, 60-02.1-19, 60-02.1-22, 60-02.1-26, 60-02.1-27, 60-02.1-29, 60-02.1-30, 60-02.1-32, 60-02.1-33, 60-02.1-34, 60-02.1-35, 60-02.1-36, 60-02.1-37, 60-02.1-38, and 60-02.1-39, subsection 1 of section 60-04-01, and sections 60-04-03, 60-04-03.1, 60-04-03.2, 60-04-03.3, 60-04-04, 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, 60-04-10, 60-05-01, 60-05-02, 60-05-03, 60-05-04, 60-06-05, 60-06-06.1, 60-10-01, 60-10-02, 60-10-03, 60-10-05, 60-10-07, 60-10-08, 60-10-09, 60-10-10, 60-10-11, 60-10-12, 60-10-14, and 60-10-15 of the North Dakota Century Code, relating to the salary of the agriculture commissioner and moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide for a report to the legislative assembly; to provide a penalty; and to provide a continuing appropriation.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the agriculture commissioner for the purpose of defraying the expenses of the agriculture commissioner, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,372,949	\$1,859,797	\$14,232,746
Operating expenses	6,444,336	258,444	6,702,780
Capital assets	13,000	2,000	15,000
Grants	8,817,774	6,000	8,823,774
Board of animal health	865,718	0	865,718
Wildlife services	1,408,000	49,400	1,457,400
Crop harmonization board	75,000	0	75,000
Pipeline restoration and reclamation oversight program	200,000	0	200,000
Agricultural products utilization commission	<u>0</u>	<u>3,760,417</u>	<u>3,760,417</u>

Total all funds	\$30,196,777	\$5,936,058	\$36,132,835
Less estimated income	<u>21,087,676</u>	<u>4,234,730</u>	<u>25,322,406</u>
Total general fund	\$9,109,101	\$1,701,328	\$10,810,429
Full-time equivalent positions	73.00	5.00	78.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
National genomics center	\$120,000	\$0
Federal environmental law impact review	1,000,000	0
Master customer database	0	110,000
Agricultural products utilization commission	0	<u>2,000,000</u>
Total all funds	\$1,120,000	\$2,110,000
Less estimated income	<u>1,120,000</u>	<u>2,000,000</u>
Total general fund	\$0	\$110,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND - MINOR USE PESTICIDE FUND.** The agriculture commissioner shall transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$6,725,799 from the environment and rangeland protection fund for the purpose of defraying the expenses of various department of agriculture programs, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. ESTIMATED INCOME - GAME AND FISH FUND.** The estimated income line item in section 1 of this Act includes the sum of \$614,430 from the game and fish department operating fund for the purpose of defraying the expenses of various department of agriculture programs, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 6. ESTIMATED INCOME - STATE WATER COMMISSION - TRANSFER.** The estimated income line item in section 1 of this Act includes the sum of \$125,000 which the state water commission shall transfer to the agriculture commissioner for the wildlife services program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 7. WATERBANK PROGRAM - MATCHING FUNDS.** The salaries and wages line item in section 1 of this Act includes \$50,000 from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

**SECTION 8. ESTIMATED INCOME - PIPELINE RESTORATION AND RECLAMATION.** The estimated income line item in section 1 of this Act includes the

sum of \$200,000 from the abandoned oil and gas well plugging and site reclamation fund for the purpose of defraying the expenses of the pipeline restoration and reclamation program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 9. TRANSFER - BANK OF NORTH DAKOTA PROFITS - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION.** The Bank of North Dakota shall transfer the sum of \$2,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the agriculture commissioner for deposit in the agricultural products utilization commission fund during the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item.

**SECTION 10. AMENDMENT.** Section 4.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-01-02. Salary of agriculture commissioner.**

The annual salary of the agriculture commissioner is one hundred ~~fivesixteen~~ thousand ~~four hundred ninety-one~~ ~~eight hundred thirty-six~~ dollars through June 30, ~~2016~~2020, and one hundred ~~eight~~nineteen thousand ~~six~~seven hundred ~~fifty-six~~fifty-seven dollars after that date.

**SECTION 11. APPROPRIATION - GRAIN INSOLVENCY LITIGATION - ONE-TIME FUNDING - APPLICATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of paying the public service commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019, for the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item. Sections 60-02.1-38 and 60-04-10 do not apply to any expenses paid from the appropriation provided in this section.

**SECTION 12. AMENDMENT.** Section 49-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**49-02-01. General jurisdiction of the public service commission over public utilities.**

The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.



7. ~~Warehouse companies engaged in the marketing, storage, or handling of agricultural products.~~
8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

**SECTION 13.** A new section to chapter 60-01 of the North Dakota Century Code is created and enacted as follows:

**Definition.**

For purposes of this title, "commissioner" means the agriculture commissioner.

**SECTION 14. AMENDMENT.** Subsection 1 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "~~Commission~~Commissioner" means the ~~public service commission~~agriculture commissioner.

**SECTION 15. AMENDMENT.** Section 60-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-02. ~~Commission~~Commissioner - Powers and duties.**

~~The commissioner has the powers and duties imposed by the provisions enumerated under this chapter and the powers conferred herein devolve upon the commission.~~

**SECTION 16. AMENDMENT.** Section 60-02-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-03. Duties and powers of the ~~commission~~commissioner.**

~~The commission shall have the duty and power to~~commissioner has the following powers and duties:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

**SECTION 17. AMENDMENT.** Section 60-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-04. Federal licensed inspector –~~Appointed by commission.~~**

The ~~commission~~commissioner may employ a federal licensed inspector whose duties are hereinafter ~~prescribed and such~~enumerated under this chapter and may employ other employees as ~~may~~ be necessary to carry out the provisions of this chapter.

**SECTION 18. AMENDMENT.** Section 60-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-05.1. Notice of procedures for resolving disputes over grain.**

A public warehouse shall post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

**SECTION 19. AMENDMENT.** Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-07. Public warehouse license - Fee - Financial statement.**

A license must be obtained from the ~~commission~~commissioner for each public warehouse in operation in this state.

1. a. ~~The commission shall stagger by lot the expiration date of all licenses issued for the period beginning August 1, 2015, so that one-half of all the licenses issued expire on July 31, 2016, and one-half of all the licenses issued expire on July 31, 2017. Thereafter, all~~All licenses issued under this section must be for a period of two years and terminate on the thirty-first day of July in the year of expiration.
- b. (1) Notwithstanding the provisions of subdivision a, the ~~commission~~commissioner shall license a warehouse annually, for the first six years of the warehouse's operation.
- (2) An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.
2. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.
3. a. The annual license fee for a public warehouse is:
  - (1) ~~Three~~Four hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
  - (2) ~~Four~~Five hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
  - (3) ~~Five~~Six hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].

- b. The biennial license fee for a public warehouse is:
- (1) ~~Six~~Seven hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
  - (2) ~~Nine hundred~~One thousand dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
  - (3) One thousand ~~one~~two hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- c. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.
4. 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. When two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses.
5. If required to obtain United States department of agriculture approval of the ~~commission's~~commissioner's warehouse inspection program, the ~~commission~~commissioner may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.

**SECTION 20. AMENDMENT.** Section 60-02-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-07.2. Receiving stations.**

A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if all of the following conditions are met:

1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.
2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.
3. The grain taken in by the receiving station is not commingled with other grain at that site.

4. The warehouseman establishing the station requests and receives ~~commission~~ permission ~~from the commissioner~~ to increase licensed capacity to include the space to be used at the receiving station.
5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.
6. Warehouse-receipted grain received at the receiving station is available for redelivery to the receiptholder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

**SECTION 21. AMENDMENT.** Section 60-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-09. Bond filed by public warehouseman.**

Before any license is effective for any public warehouseman under this chapter, the applicant for the license shall file a bond with the ~~commission~~commissioner which must:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in that warehouse.
4. Be conditioned:
  - a. For the faithful performance of the licensee's duties as a public warehouseman.
  - b. For compliance with the provisions of law and the rules of the ~~commission~~commissioner relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
  - a. Protecting the holders of outstanding receipts.
  - b. Covering the costs incurred by the ~~commission~~commissioner in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.

8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commission~~commissioner shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as the ~~commission~~commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~commissioner, and authorized to do business within the state. The ~~commission~~commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~whenif, in its~~the commissioner's judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and the bond must be construed to cover ~~such~~the elevators, mills, or warehouses, as a whole and not a specific amount for each.

**SECTION 22. AMENDMENT.** Section 60-02-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-09.1. Bond cancellation - Release of surety.**

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commission~~commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the warehouseman files a new bond at least thirty days before liability ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commission~~commissioner. ~~Whenif~~ a license is so suspended, the warehouseman shall give notice of such suspension to each receiptholder having grain stored in the warehouse. The warehouseman shall further notify each receiptholder having grain stored in the warehouse that the grain must be removed from the warehouse or ~~it~~the grain will be priced and redeemed in cash in accordance with section 60-02-41.

**SECTION 23. AMENDMENT.** Section 60-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-10.1. Revocation and suspension.**

The ~~commission~~commissioner may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the warehouseman may, upon the ~~commission's~~commissioner's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the ~~commission~~commissioner.

**SECTION 24. AMENDMENT.** Section 60-02-11 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-11. Scale ticket - Contents - Conversion.**

1. a. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from whom the grain is received, upon receipt of each load of grain.
  - b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within forty-five days after the grain is delivered to the warehouse, unless:
    - (1) The person to whom the scale ticket is issued signs a form waiving all rights to trust benefits under section 60-04-03.1;
    - (2) The form identifies by number each scale ticket to which the waiver applies; and
    - (3) The form is signed by the warehouseman.
  - c. The ~~commission~~commissioner shall prepare the waiver form required by subdivision b and make the form available to each warehouse.
  - d. The warehouseman shall keep one copy of the signed waiver form with the records of the warehouse, provide one copy to the person who was issued the scale ticket and signed the form, and file one copy with the ~~commission~~commissioner.
2. Nothing in this chapter requires a warehouseman to receive grain for storage. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.

**SECTION 25. AMENDMENT.** Section 60-02-14 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-14. Warehouse receipts - Copy.**

Provision ~~shall~~must be made for a stub record or copy of each warehouse receipt issued by a warehouseman, showing:

1. The serial number and date of receipt.
2. The kind and grade of grain.
3. The dockage and net weight of the grain.

The record or copy ~~shall~~must remain in the possession of the warehouseman for inspection by the ~~commission~~commissioner and persons properly interested.

**SECTION 26. AMENDMENT.** Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.**

1. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota ~~public service commission~~agriculture commissioner. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. This receipt does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

2. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the ~~commission~~commissioner as a part of the warehouse license process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the ~~commission~~commissioner.

**SECTION 27. AMENDMENT.** Section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-24. Reports to be made by public warehouseman - Penalty for failure.**

Each licensed and bonded public warehouseman shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commission~~commissioner. The report must contain or be verified by a written declaration ~~that it~~the report is made under the penalties of perjury. The report may be called for more frequently if the ~~commission~~commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commission~~commissioner may make the information available for use by other governmental entities, but the ~~commission~~commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the ~~commission~~commissioner not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.

3. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances shall ~~may~~ the grain account and other accounts be mixed.

The ~~commission~~commissioner may refuse to renew a license to any public warehouseman who fails to make a required report.

**SECTION 28. AMENDMENT.** Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-27. Federal grades to control - Grades to be posted.**

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. ~~They~~Public warehousemen shall post in a conspicuous place in ~~their~~the public warehousemen's warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with ~~their~~the policy of the warehousemen which must be filed with the ~~commission~~commissioner and posted in a conspicuous place in ~~their~~the warehouse of the public warehousemen. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The ~~commission~~commissioner, after hearing, may prohibit the use of nonfederal grades.

**SECTION 29. AMENDMENT.** Section 60-02-35.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-35.1. Insurance - Cancellation - Suspension of license.**

An insurance company shall give at least sixty days' notice to the ~~commission~~commissioner and the insured by certified mail return receipt requested before cancellation of an insurance policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commission~~commissioner. ~~When~~If a license is so suspended, the warehouseman shall give notice of ~~such~~the suspension to each receiptholder having grain stored in the warehouse. The warehouseman shall further notify each receiptholder having grain stored in the warehouse ~~that~~ the grain must be removed from the warehouse or ~~it~~the grain will be priced and redeemed in cash in accordance with section 60-02-41.

**SECTION 30. AMENDMENT.** Section 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-38. Refund of license fee by ~~commission~~commissioner.**

~~When~~If requested in writing, the ~~commission~~commissioner shall refund the license fee of a public warehouse, or so much as in ~~its~~the commissioner's judgment is just and reasonable, ~~when~~if satisfactory proof is furnished ~~that~~ the warehouse has been transferred to some other person, and the new owner has obtained a license for the same warehouse for the unexpired period for which the original license was issued. ~~When~~If a warehouse is destroyed by fire or other cause, the license fee may be prorated as the ~~commission~~commissioner may determine.



**SECTION 31. AMENDMENT.** Section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-40. Transfer of warehouse - Redemption of receipts.**

Whenever a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the ~~commissioner~~ commissioner first of ~~its~~ the warehouseman's intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:
  - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
  - b. The number and amount of receipts outstanding; and
  - c. The names and addresses of the receiptholders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receiptholders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The ~~commissioner~~ commissioner may waive the thirty-day notice period upon receipt of written consent of all receiptholders.
4. Transfer all stored grain undelivered at the expiration of such thirty-day period to ~~its~~ the warehouseman's successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred.
5. Surrender to the ~~commission~~ commissioner ~~the warehouseman's~~ license for cancellation and at such, at which time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commission, whereupon, it~~ commissioner, at which time, the commissioner, first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption ~~thereof of all outstanding receipts~~ has been provided for, the ~~commissioner~~ commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any warehouse will be recognized by the ~~commissioner~~ commissioner except when made in accordance with the provisions of this section.

**SECTION 32. AMENDMENT.** Section 60-02-41 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-41. Going out of business - Redemption of receipts.**

When a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, ~~such~~ the warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the

price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, ~~must~~shall accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the ~~commission~~commissioner and all outstanding receiptholders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~must be settled in cash and priced on the market on the day of closing.

**SECTION 33. AMENDMENT.** Section 60-02-42 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-42. 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~~commissioner, upon ~~its~~the ~~commissioner's~~ 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~~commissioner. 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 34.** A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

**Release of records - Confidentiality.**

1. As a condition of licensure under section 60-02-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a public warehouse license; or
  - b. An investigation after issuance or renewal of a public warehouse license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a public warehouse license; or
  - b. An investigation after issuance or renewal of a public warehouse license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

**SECTION 35. AMENDMENT.** Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "~~Commission~~Commissioner" means the ~~public service commission~~agriculture commissioner.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
6. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
  - a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
  - b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
  - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.

9. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

**SECTION 36. AMENDMENT.** Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-02. ~~Commission~~Commissioner - Powers and duties.**

The ~~powers and duties imposed and the powers conferred by this chapter devolve upon the commission of the commissioner are enumerated in this chapter.~~

**SECTION 37. AMENDMENT.** Section 60-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-03. Duties and powers of the ~~commission~~commissioner.**

The ~~commission~~commissioner has the duty and power to:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any books, documents, and records.
4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

**SECTION 38. AMENDMENT.** Section 60-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-04. Federal licensed inspector ~~-Appointed by commission.~~**

The ~~commission~~commissioner may employ a federal licensed inspector whose duties are hereinafter prescribed, ~~and such enumerated in this chapter and may employ~~ other employees as ~~may be~~ necessary to carry out the provisions of this chapter.

**SECTION 39. AMENDMENT.** Section 60-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-06. Notice of procedures for resolving disputes over grain.**

A facility-based grain buyer shall post a notice containing the procedures specified in section 60-02.1-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The facility-based grain buyer shall post the notice in the grain inspection room of the facility. The notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

**SECTION 40. AMENDMENT.** Section 60-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.**

Grain buyers ~~must~~shall obtain an annual license from the ~~commission~~commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. A facility-based grain buyer ~~must~~shall obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is ~~three~~four hundred dollars and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.

If required to obtain United States department of agriculture approval of the ~~commission's~~commissioner's grain buyer inspection program, the ~~commission~~commissioner 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 41. AMENDMENT.** Section 60-02.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-07.1. Roving grain buyer license - How obtained - Fee.**

Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in this state ~~must~~shall obtain an annual license from the ~~commission~~commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a roving grain buyer is ~~two~~three hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

**SECTION 42. AMENDMENT.** Section 60-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-08. Bond filed by grain buyer.**

Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the ~~commission~~commissioner which must:

1. Be in a sum not less than ~~five~~ten thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
  - a. For the faithful performance of the licensee's duties as a grain buyer.

- b. For compliance with the provisions of law and the rules of the ~~commissioner~~ relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by the bond.
6. Be for the specific purpose of:
  - a. Protecting the sellers of grain.
  - b. Covering the costs incurred by the ~~commissioner~~ in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain buyer.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commissioner~~ may require an increase in the amount of any bond, ~~from time to time~~, as ~~the commissioner~~ deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commissioner~~, and authorized to do business within the state. The ~~commissioner~~ may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in ~~the commissioner's~~ judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and the bond must be construed to cover those facilities as a whole and not a specific amount for each.

**SECTION 43. AMENDMENT.** Section 60-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-09. Bond cancellation - Release of surety.**

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commissioner~~ of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the grain buyer files a new bond at least thirty days before liability ceases, the ~~commissioner~~, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commissioner~~.

**SECTION 44. AMENDMENT.** Section 60-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-11. Revocation and suspension.**

The ~~commissioner~~ may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this

chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the ~~commission's~~commissioner's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing. Grain may be sold only with the prior approval of the ~~commission~~commissioner.

**SECTION 45. AMENDMENT.** Section 60-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-16. Records required to be kept by grain buyers.**

Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as ~~from time to time~~ may be required by the ~~commission~~commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made~~adopted by the ~~commission~~commissioner. The ~~commission~~commissioner at all times shall must have access to such accounts, records, and memoranda.

**SECTION 46. AMENDMENT.** Section 60-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-17. Reports to be made by grain buyers - Penalty for failure.**

Each licensed and bonded grain buyer shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commission~~commissioner. The report must contain or be verified by a written declaration ~~that it~~the report is made under the penalties of perjury. The report may be called for more frequently if the ~~commission~~commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commission~~commissioner may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the ~~commission~~commissioner not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.
3. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

The ~~commission~~commissioner may refuse to renew a license to any grain buyer who fails to make a required report.

**SECTION 47. AMENDMENT.** Section 60-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-19. Federal grades to control - Grades to be posted.**

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations

applicable thereto adopted by federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the ~~commissioner~~ commissioner and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the ~~commissioner~~ commissioner may prohibit the use of nonfederal grades.

**SECTION 48. AMENDMENT.** Section 60-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-22. Insurance - Cancellation - Suspension of license.**

An insurance company shall give at least sixty days' notice to the ~~commissioner~~ commissioner and the insured by registered mail return receipt requested before cancellation of an insurance policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commissioner~~ commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commissioner~~ commissioner.

**SECTION 49. AMENDMENT.** Section 60-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-26. Transfer of facility - Redemption of receipts.**

~~Whenever~~ If a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

1. Notify the ~~commissioner~~ commissioner first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.
2. Provide related information as may be required by the ~~commissioner~~ commissioner.
3. Surrender to the ~~commissioner~~ commissioner the grain buyer's license for cancellation and at that time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commissioner~~ commissioner, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the ~~commissioner~~ commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any facility will be recognized by the ~~commissioner~~ commissioner except when made in accordance with the provisions of this section.

**SECTION 50. AMENDMENT.** Section 60-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-27. Going out of business - Redemption of receipts.**

~~When~~ If a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, ~~such~~ the grain



buyer shall redeem all outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of such ~~the~~ receipts, upon due notice, ~~must~~ shall accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the ~~commissioner~~ commissioner and all receiptholders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein shall ~~must~~ be settled in cash and priced on the market on the day of closing.

**SECTION 51. AMENDMENT.** Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-29. Appointment of ~~commissioner~~ commissioner.**

Upon the insolvency of any roving grain buyer, the ~~commissioner~~ commissioner shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the receiptholders that the ~~commissioner~~ commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commissioner~~ commissioner shall proceed to exercise ~~its~~ the commissioner's authority without further direction from the court.

Upon the filing of the ~~commissioner's~~ commissioner's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

**SECTION 52. AMENDMENT.** Section 60-02.1-30 of 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 noncredit-sale receiptholders and to pay the costs incurred by the ~~commissioner~~ commissioner 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 ~~commissioner~~ commissioner is appointed trustee must be remitted to the ~~commissioner~~ commissioner and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.

4. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, 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~~from the claim for relief, 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 53. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-32. Notice to receiptholders and credit-sale contract claimants.**

Upon ~~its~~the commissioner's appointment, the ~~commissioner~~commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commissioner~~commissioner shall publish a notice of ~~its~~the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the ~~commissioner~~commissioner along with the receipts, contracts, or other evidence of the claims required by the ~~commissioner~~commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the ~~commissioner~~commissioner, the ~~commissioner~~commissioner is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

**SECTION 54. AMENDMENT.** Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-33. Remedy of receiptholders.**

~~No~~A receiptholder ~~has~~does not have a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commissioner~~commissioner fails or refuses to apply for ~~its~~the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

**SECTION 55. AMENDMENT.** Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-34. Commissioner to marshal trust assets.**

Upon ~~its~~the commissioner's appointment, the ~~commissioner~~commissioner shall marshal all of the trust fund assets. The ~~commissioner~~commissioner may maintain suits in the name of the state of North Dakota for the benefit of all receiptholders against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

**SECTION 56. AMENDMENT.** Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-35. Power of commissioner to prosecute or compromise claims.**

The ~~commissioner~~commissioner may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~when~~if it will be in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

**SECTION 57. AMENDMENT.** Section 60-02.1-36 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.**

All funds received by the ~~commissioner~~commissioner as trustee must be deposited in the Bank of North Dakota.

**SECTION 58. AMENDMENT.** Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-37. Report of trustee to court - Approval - Distribution.**

1. Upon the receipt and evaluation of claims, the ~~commissioner~~commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:
  - a. Relevant liens or pledges.
  - b. Relevant assignments.
  - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
  - d. In case of relevant cash claims or checks, the amount of the claim.

- e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report must also contain the proposed reimbursement to the ~~commission~~commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the ~~commission~~commissioner in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.
3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~commissioner's report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the ~~commission~~commissioner.
4. Any aggrieved person having an objection to the ~~commission's~~commissioner's report shall file the objection with the court and serve copies on the ~~commission~~commissioner, the licensee, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~commissioner from ~~its~~the commissioner's trust.

**SECTION 59. AMENDMENT.** Section 60-02.1-38 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-38. Filing fees and court costs - Expenses.**

The ~~commission~~commissioner may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the ~~commission~~commissioner in the prosecution of the action and the cost of employing outside counsel must be paid from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commission~~commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission~~commissioner, ~~its~~the commissioner's employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, must be reimbursed to the ~~commission~~commissioner from the trust fund and credit-sale contract indemnity funds as appropriate.

**SECTION 60. AMENDMENT.** Section 60-02.1-39 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-39. Cease and desist.**

~~Whenever~~If an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the ~~commission~~commissioner, upon ~~its~~the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the

~~commissioner~~ commissioner. 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 61.** A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

**Release of records - Confidentiality.**

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a grain buyer license; or
  - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a grain buyer license; or
  - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

**SECTION 62. AMENDMENT.** Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "~~Commission~~Commissioner" means the ~~public service commission~~agriculture commissioner.

**SECTION 63. AMENDMENT.** Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-03. Appointment of ~~commission~~commissioner.**

Upon the insolvency of any warehouseman, the ~~commission~~commissioner shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court ~~that such~~the warehouseman is insolvent within the meaning of this chapter and that it would be for the best interests of the receipt holders that the

~~commissioner~~ secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon at which time~~ the ~~commissioner~~ shall proceed to exercise its~~the commissioner's~~ authority without further direction from the court.

Upon the filing of the ~~commission's~~~~commissioner's~~ application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value ~~thereof of the trust fund~~, until the court issues its~~an~~ order granting or denying the application.

**SECTION 64. AMENDMENT.** Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-03.1. Trust fund established.**

1. Upon the insolvency of any warehouseman, a trust fund ~~shall~~must be established:
  - a. For the benefit of noncredit-sale receiptholders of the insolvent warehouseman, other than those who have waived their rights as beneficiaries of the trust fund in accordance with section 60-02-11; and
  - b. To pay the costs incurred by the ~~commissioner~~ in the administration of this chapter.
2. The trust fund consists of the following:
  - a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain;
  - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commissioner~~ is appointed trustee;
  - c. The proceeds of insurance policies upon grain destroyed in the elevator;
  - d. The claims for relief, and proceeds ~~therefrom from the claims for relief~~, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
  - e. The claims for relief, and proceeds ~~therefrom from the claims for relief~~, for the conversion of any grain stored in the warehouse;
  - f. Unencumbered accounts receivable for grain sold ~~prior to before~~ the filing of the claim that precipitated an insolvency;
  - g. Unencumbered equity in grain hedging accounts; and
  - h. Unencumbered grain product assets.

**SECTION 65. AMENDMENT.** Section 60-04-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-03.2. Possession of grain.**

Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner shall seek possession of the grain to be included in the trust fund. Upon ~~its~~the commissioner's possession of any grain in the warehouse, the ~~commission~~commissioner shall sell such grain and apply the proceeds to the trust fund.

**SECTION 66. AMENDMENT.** Section 60-04-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-03.3. Joinder of surety - Deposit of proceeds.**

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the ~~commission~~commissioner if the ~~commission~~commissioner believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. ~~When~~ if it appears in the best interests of the receiptholders, the court may order the surety to deposit the penal sum of the bond, or so much ~~thereof~~of the sum as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

**SECTION 67. AMENDMENT.** Section 60-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-04. Notice to receiptholders and credit-sale contract claimants.**

Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner may take possession of relevant books and records of the warehouseman. The ~~commission~~commissioner shall cause a notice of ~~its~~the commissioner's appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, as shown by the warehouseman's records. The notices must require outstanding receiptholders and credit-sale contract claimants to file their claims against the warehouseman with the ~~commission~~commissioner along with the receipts, contracts, or any other evidence of the claims as required by the ~~commission~~commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time as prescribed by the ~~commission~~commissioner, the ~~commission~~commissioner is relieved of further duty or action under this chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

**SECTION 68. AMENDMENT.** Section 60-04-05 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-05. Remedy of receiptholders.**

~~No~~A receiptholder ~~has~~does not have a separate claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commission~~commissioner fails or refuses to apply for ~~its~~the commissioner's own appointment from the district court or unless the district court denies the application for appointment. This chapter does not prohibit or prevent any receiptholder, either individually or in conjunction with other receiptholders, from

pursuing concurrently such other remedy against the person or property of ~~such~~the warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

**SECTION 69. AMENDMENT.** Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-06. ~~Commission~~Commissioner to marshal trust assets.**

Upon ~~its~~the ~~commissioner's~~commissioner's appointment by the district court, the ~~commissioner~~commissioner may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon ~~its~~the ~~commissioner's~~commissioner's own relation, but for the benefit of all such receiptholders against:

1. The insurers of grain;
2. The warehouseman's bond;
3. Any person who may have converted any grain; or
4. Any receiptholder who ~~shall have~~ received more than ~~its~~the ~~receiptholder's~~receiptholder's just and pro rata share of grain,

for the purpose of marshalling all of the trust fund assets and distributing the same among the receiptholders. The ~~commissioner~~commissioner shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of grain ~~shall~~must be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the ~~commission shall deem~~commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

**SECTION 70. AMENDMENT.** Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-07. Power of ~~commissioner~~commissioner to prosecute or compromise claims.**

The ~~commissioner~~commissioner may:

1. Prosecute any action provided in this chapter in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action ~~whenever~~if it is in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of the compromise or of the full amount of any insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

**SECTION 71. AMENDMENT.** Section 60-04-08 of the North Dakota Century Code is amended and reenacted as follows:



**60-04-08. Money received by trustee - Deposited in Bank of North Dakota.**

All moneys collected and received by the ~~commission~~commissioner as trustee under this chapter, pending the marshalling of the fund, shall ~~shall~~must be deposited in the Bank of North Dakota.

**SECTION 72. AMENDMENT.** Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-09. Report of trustee to court - Approval - Distribution.**

Upon the receipt and evaluation of claims filed with ~~it~~the commissioner, the ~~commission~~commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges ~~thereon~~on the claims.
2. Assignments ~~thereof~~of the claims.
3. Deductions ~~therefrom~~from the claims by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount ~~thereof~~of the claims or checks.
5. In the case of scale tickets or warehouse receipts, the amount ~~thereof~~ based upon the market price prevailing on the date the ~~commission~~commissioner first received a copy of the written demand required by section 60-04-02.
6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

The report must also contain the proposed reimbursement to the ~~commission~~commissioner for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commission~~commissioner in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~their~~the interests of the claimants are determined. If the trust fund is insufficient to redeem all receiptholder claims in full, the fund must be shown prorated in the report in the manner the ~~commission~~commissioner deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commission's~~commissioner's report should not be approved and credit-sale contract indemnity fund payments and distribution of the trust fund be made as proposed, and payments from the credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be served by the ~~commission~~commissioner by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commission~~commissioner.

Any aggrieved person having an objection to the ~~commission's~~commissioner's report shall file the objection with the court and serve copies on the ~~commission~~commissioner, the warehouseman, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund,

payments from the credit-sale contract indemnity fund, and discharge of the ~~commissioner~~ commissioner from ~~its~~ the commissioner's trust.

**SECTION 73. AMENDMENT.** Section 60-04-10 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-10. Filing fees and court costs - Expenses.**

In any action in a state court in this state, the ~~commission shall~~ commissioner may not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the ~~commissioner~~ commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~commissioner~~ commissioner shall deduct the expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the ~~commissioner~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission,~~ commissioner, ~~the commissioner's~~ employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the ~~commissioner~~ commissioner from the trust fund and credit-sale indemnity funds as appropriate.

**SECTION 74. AMENDMENT.** Section 60-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**60-05-01. Public elevators and warehouses - ~~Commission~~ Commissioner may require uniform accounting system.**

The ~~public service commission~~ commissioner may require every association, copartnership, corporation, or limited liability company conducting a public elevator or warehouse in this state to adopt a uniform accounting system established by ~~such~~ the commissioner.

**SECTION 75. AMENDMENT.** Section 60-05-02 of the North Dakota Century Code is amended and reenacted as follows:

**60-05-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders.**

The ~~commissioner~~ commissioner may install, and ~~whenever~~ if requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The ~~commissioner~~ commissioner on ~~its~~ the commissioner's own motion may, or on request of the required percentage of partners, stockholders, or members, the ~~commissioner~~ commissioner shall, send a competent examiner to examine the books and financial accounts of ~~such~~ the elevator or warehouse. ~~Whenever~~ if a request for the examination of the accounts of any association, copartnership, corporation, or limited liability company has been made to the ~~commissioner~~ commissioner, as provided for in this section, ~~an examination thereafter~~ subsequent examinations must be made at least once every year until the ~~commission shall be~~ commissioner is requested to discontinue such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. ~~When~~ if such examination has been made, the examiner shall report immediately the results ~~thereof~~ of the examination to the president and the secretary of such association, copartnership, corporation, or limited liability company and to the ~~commissioner~~ commissioner.

**SECTION 76. AMENDMENT.** Section 60-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-05-03. Certificate issued by ~~commissioner~~ after its examination of accounts.**

If the ~~commissioner~~ is satisfied from ~~the commissioner's~~ examination that the person, association, copartnership, corporation, or limited liability company examined is solvent and ~~the~~ method of doing business is such as is likely to be beneficial to all of its members or persons interested therein, the ~~commissioner~~ shall issue a certificate, countersigned by the examiner, to the agent or manager. Such certificate ~~shall~~must be kept posted conspicuously in the warehouse or elevator of such person, association, copartnership, corporation, or limited liability company and ~~shall~~must state:

1. That said methods of doing business are sound.
2. That such person, association, copartnership, corporation, or limited liability company is solvent.
3. That its books and accounts are kept properly.

If the affairs and methods of doing business of such person, association, copartnership, corporation, or limited liability company ~~shall~~do not seem sound or satisfactory to the ~~commissioner~~, ~~the commissioner~~, the commissioner shall issue a certificate or statement, countersigned by the person who made the examination, stating in what particular and in what respect the business methods practiced or methods of keeping books and accounts of such person, association, copartnership, corporation, or limited liability company are not deemed safe. The ~~commissioner~~ shall mail a copy of ~~said~~the statement or certificate to each of such shareholders or stockholders as may have requested the ~~commissioner~~ to make such examination. The ~~commissioner~~ also shall send a copy thereof to the president and the secretary of such association, copartnership, corporation, or limited liability company.

**SECTION 77. AMENDMENT.** Section 60-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**60-05-04. Fees of examiner for installing and examining accounting system.**

For making installation of a uniform accounting system and examining the financial accounts of an elevator or public warehouse, an association, copartnership, corporation, or limited liability company shall pay the examiner a reasonable fee, as determined by the ~~commissioner~~. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the ~~commissioner~~ may cancel the license to do business. All such fees ~~shall~~must be paid into the state treasury. The expenses incurred by the examiner under the provisions of this chapter shall be paid out of the appropriations made by the legislative assembly for this purpose and such expenses ~~shall~~must be audited and paid in the same manner as other expenses are audited and paid.

**SECTION 78. AMENDMENT.** Section 60-06-05 of the North Dakota Century Code is amended and reenacted as follows:

**60-06-05. Sidetracks to be provided by railroad company on its land.**

Every railroad company or corporation organized under the laws of this state or doing business ~~therein in this state~~, upon application in writing, shall provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator without reference to its size, cost, or capacity, ~~whereif~~ grain or potatoes are or may be stored. The railroad company is not required to construct or furnish any sidetracks except upon its own land or right of way. Such elevators and warehouses may not be constructed within one hundred feet [30.48 meters] of any existing structure and must be at safe fire distance from the station buildings so as not to conflict essentially with the safe and convenient operation of the road. ~~Whereif~~ stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whenif~~ required so to do by the ~~public service commission~~commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

**SECTION 79. AMENDMENT.** Section 60-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-06-06.1. Determination - ~~Appropriation~~Expenses.**

Any party may petition the ~~public service commission~~commissioner to determine rights governed under this chapter. The ~~commission~~commissioner shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the ~~commission~~commissioner, directly to the entities owed. The ~~commission~~commissioner may adopt rules to carry out this section.

**SECTION 80. AMENDMENT.** Section 60-10-01 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.**

An assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The licensee purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The licensee shall submit any assessment collected under this section to the ~~public service commission~~commissioner no later than thirty days after each calendar quarter. The ~~commission~~commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

**SECTION 81. AMENDMENT.** Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.**

There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the ~~public service commission~~commissioner and shall deposit any income earned through the investments into the fund. The fund and earnings of the fund are appropriated to the ~~public service commission~~commissioner

on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

**SECTION 82. AMENDMENT.** Section 60-10-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-03. Credit-sale contract indemnity fund - Suspension of assessment.**

At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a level of six million dollars, the ~~public service commission~~commissioner shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than three million dollars, the ~~public service commission~~commissioner shall require collection of the assessment.

**SECTION 83. AMENDMENT.** Section 60-10-05 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-05. Credit-sale contract indemnity fund - Availability of money.**

Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the ~~public service commission~~commissioner serve as the trustee, the ~~public service commission~~commissioner shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

**SECTION 84. AMENDMENT.** Section 60-10-07 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-07. Credit-sale contract indemnity fund - Prorated claims.**

If claims for indemnity payments from the credit-sale contract indemnity fund exceed the amount in the fund, the ~~public service commission~~commissioner shall prorate the claims and pay the prorated amounts. As future assessments are collected, the ~~public service commission~~commissioner shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

**SECTION 85. AMENDMENT.** Section 60-10-08 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-08. Reimbursement for later insolvencies.**

The ~~public service commission~~commissioner shall ensure that all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the ~~public service commission~~commissioner is appointed trustee under section 60-02.1-29 or 60-04-03.

**SECTION 86. AMENDMENT.** Section 60-10-09 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative expenses.**

Any expense incurred by the ~~public service commission~~commissioner in administrating the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

**SECTION 87. AMENDMENT.** Section 60-10-10 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-10. Credit-sale contract indemnity fund assessment - Failure to collect assessment - Penalty.**

Any person who knowingly or intentionally refuses or fails to collect the assessment required under this chapter from producers or to submit any assessment collected from producers to the ~~public service commission~~commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

**SECTION 88. AMENDMENT.** Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-11. Revocation and suspension.**

The ~~commission~~commissioner may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

**SECTION 89. AMENDMENT.** Section 60-10-12 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-12. Cease and desist.**

If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the ~~commission~~commissioner, the ~~commission~~commissioner, upon ~~its~~the commissioner's own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the ~~commission~~commissioner. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

**SECTION 90. AMENDMENT.** Section 60-10-14 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-14. Subrogation.**

Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The ~~commission~~commissioner may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate ~~its~~the interest of the claimant, if any, to the ~~commission~~commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

**SECTION 91. AMENDMENT.** Section 60-10-15 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-15. Unlicensed facility-based grain buyer.**

This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state grain buyer license. The ~~commission~~ commissioner has the duty and power to examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 35

### SENATE BILL NO. 2010

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the insurance commissioner; to create and enact section 26.1-22-03.1 of the North Dakota Century Code, relating to North Dakota reserve fund use of producers; to amend and reenact subsection 2 of section 26.1-01-07, section 26.1-01-09, subdivision c of subsection 8 of section 26.1-04-03, subsection 2 of section 26.1-04-06, sections 26.1-21-03, 26.1-21-17, 26.1-22-03, and 26.1-23.1-01, and subsection 2 of section 26.1-25-16 of the North Dakota Century Code, relating to the state fire and tornado fund, the state bonding fund, fees chargeable by the insurance commissioner, the salary of the insurance commissioner, insurance rebates, and government self-insurance pools; to provide for a legislative management study; to provide a statement of legislative intent; to provide for a report; to provide a continuing appropriation; to provide for a penalty; 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 insurance commissioner for the purpose of defraying the expenses of the insurance commissioner, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$8,549,567	(\$399,569)	\$8,149,998
Operating expenses	<u>2,179,777</u>	<u>(413,102)</u>	<u>1,766,675</u>
Total special funds	\$10,729,344	(\$812,671)	\$9,916,673
Full-time equivalent positions	46.00	(5.00)	41.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Health care analysis	\$0	\$200,000
Total special funds	\$0	\$200,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The insurance commissioner shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of \$18,818,030, or so much of the sum as may be necessary, to the insurance



commissioner for the purpose of providing payments, in accordance with provisions of section 18-04-05, to North Dakota fire departments in the amount of \$17,989,505 and payments to the North Dakota firefighter's association in the amount of \$828,525, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. UNSATISFIED JUDGMENT FUND.** Section 1 of this Act includes \$29,703 from the state unsatisfied judgment fund to pay unsatisfied judgment fund administrative expenses for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. AMENDMENT.** Subsection 2 of section 26.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Nonprofit health service corporations and health maintenance organizations are subject to the same fees as any other insurance company. County mutual insurance companies and benevolent societies are liable only for the fees mentioned in subdivisions b, f, g, and ~~kh~~ of subsection 1.

**SECTION 6. AMENDMENT.** Section 26.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-01-09. Salary of commissioner.**

The annual salary of the commissioner is ~~one hundred two thousand six hundred eighty-nine dollars through June 30, 2016~~ one hundred seven thousand eight hundred eighty-five dollars through June 30, 2020, and ~~one hundred five thousand seven hundred seventy~~ one hundred ten thousand five hundred eighty-two dollars thereafter.

**SECTION 7. AMENDMENT.** Subdivision c of subsection 8 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

- c. Notwithstanding any other provision in this subsection, if the cost does not exceed an aggregate retail value of one hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subdivision, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subdivision, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subdivision, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain ~~a quote or~~ a contract of insurance.

**SECTION 8. AMENDMENT.** Subsection 2 of section 26.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of one hundred dollars per person per year, an

insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

**SECTION 9. AMENDMENT.** Section 26.1-21-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-03. Commissioner may employ or contract for assistants - Continuing appropriation.**

The commissioner may employ assistants or contract for the services of assistants from the North Dakota insurance reserve fund as may be necessary to operate the state bonding fund. The salaries of all employees together with all other expenditures for the operation of the fund must remain within the appropriations made by the legislative assembly for these purposes and must be paid by warrant check drawn on the state treasury prepared by the office of management and budget after the approval of expense vouchers by the office of the budget. Moneys in the reserve fund of the state bonding fund are appropriated to the commissioner on a continuing basis for the purpose of employing or contracting for services as provided under this section.

**SECTION 10. AMENDMENT.** Section 26.1-21-17 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-21-17. Allowed liability claims payable from fund - Administrative expenses - Methods of payment.**

A claim allowed against the fund must be paid upon warrants drawn upon the state treasurer against the fund. The warrant must be prepared by the office of management and budget pursuant to the directions of the commissioner. Payments for administrative expenses of the state bonding fund must be made from the reserve fund of the state bonding fund or must be made within the limitations of legislative appropriations upon warrant checks prepared by the office of management and budget after the approval of vouchers by the commissioner.

**SECTION 11. AMENDMENT.** Section 26.1-22-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-22-03. Employment of assistants - Expenditures from fund - Continuing appropriation.**

To carry out this chapter, the commissioner may utilize any information on file in the state fire marshal's department and any of the employees of the commissioner

and the commissioner may employ necessary assistants or contract for services of assistants from the North Dakota insurance reserve fund and may incur necessary expenses. All expenditures made for these purposes, other than services contracted and paid for by moneys from the fund and any necessary expenses paid from moneys from the reserve balance within the fund, must remain within the limits of legislative appropriations and must be paid out of the fund upon warrants prepared by the office of management and budget drawn upon the state treasurer after the approval of vouchers by the office of the budget. Moneys from the reserve balance within the fund are appropriated to the commissioner on a continuing basis for the purposes of this section.

**SECTION 12.** Section 26.1-22-03.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-22-03.1. North Dakota insurance reserve fund - Producers - Commission.**

The North Dakota insurance reserve fund may use the services of producers licensed under this title to assist policyholders. Any commission paid to a producer under this section must be paid out of the premium income of the fund and must be assessed against the policyholders that benefit from the producer.

**SECTION 13. AMENDMENT.** Section 26.1-23.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-23.1-01. Government self-insurance pools - Regulation - Reinsurance.**

1. Any two or more entities that have united to self-insure against their legal liability under chapter 32-12.1 or any state agency that unites with another state agency or political subdivision, or both, to self-insure against their legal liabilities are subject to the provisions of this chapter with the exception of a city and its park district established pursuant to chapter 40-49. Government self-insurance pools may only provide coverage of the following types for pool members, their officers, employees, and agents:
  - a. Casualty insurance, including general, public officials, and professional liability coverages.
  - b. Automobile insurance, including motor vehicle liability insurance coverage, security for motor vehicles owned or operated as required by chapter 26.1-41, and protection against other liability and laws associated with the ownership of motor vehicles and automobile physical damage coverages.
  - c. Property insurance, including inland marine coverage, money and securities coverage, and extra expense coverage. However, this subdivision does not authorize government self-insurance pools to write those types of insurance coverages offered by the state fire and tornado fund under the provisions of chapter 26.1-22 as they existed on December 31, 1988, unless a government self-insurance pool enters a contract with the commissioner to provide services for the state fire and tornado fund under section 26.1-22-03.
  - d. Other coverages authorized by the commissioner and necessary to a pool's membership.

2. A government self-insurance pool may not expose itself to loss on any single risk or hazard in an amount exceeding ten percent of the amount of its admitted assets unless the pool obtains excess insurance or reinsurance with insurance companies approved for such business by the insurance commissioner.

**SECTION 14. AMENDMENT.** Subsection 2 of section 26.1-25-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of one hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

**SECTION 15. REPORT TO THE LEGISLATIVE MANAGEMENT - INSURANCE DEPARTMENT ANALYSIS OF HEALTH CARE - HOSPITAL REPORTING - PENALTY.** During the 2019-20 interim, the insurance department shall assist the legislative management with the interim study of health insurance premium trends as approved by the sixty-sixth legislative assembly in House Bill No. 1106. During the interim, the insurance department shall conduct a detailed analysis of health care in the state and submit the report to the legislative management. During the interim, upon request of the insurance department, hospitals in cities with a population exceeding ten thousand shall provide the insurance department requested data regarding billing and payment information, financial information, management information, and other information the insurance department deems necessary to complete a detailed analysis of health care in the state. The department may not request data that include personally identifiable information and the hospitals may provide data in the aggregate. If a hospital fails, without just cause, to provide the insurance department with requested data as required under this section, the insurance commissioner may charge the hospital a civil penalty of up to one thousand dollars per day the hospital is in violation.

**SECTION 16. LEGISLATIVE INTENT - INSURANCE TAX DISTRIBUTION FUND PAYMENTS TO FIRE DEPARTMENTS.** It is the intent of the sixty-sixth legislative assembly that, when feasible, fire departments utilize increased payments from the insurance tax distribution fund to improve their insurance service office rating.

**SECTION 17. LEGISLATIVE MANAGEMENT STUDY - HEALTH INSURANCE - PRE-EXISTING CONDITIONS.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of state guaranteed issue provisions for health insurance. The study must include

consideration of protections for individuals with pre-existing conditions and consideration of whether to restructure the comprehensive health association of North Dakota. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 18. LEGISLATIVE MANAGEMENT STUDY - VOLUNTEER FIREFIGHTER PENSION.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of establishing a pension for volunteer firefighters. The study must include a review of firefighter needs in the state and benefits provided to volunteer firefighters in other states. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 19. EMERGENCY.** Sections 9, 10, 11, 12, and 13 of this Act are declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 36

### SENATE BILL NO. 2011

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the securities department; and to amend and reenact subsection 5 of section 10-04-03 of the North Dakota Century Code, relating to collection of fees, civil penalties, and other moneys collected under the Securities Act.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the securities department for the purpose of defraying the expenses of the securities department, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,848,667	\$314,891	\$2,163,558
Operating expenses	<u>506,047</u>	<u>87,514</u>	<u>593,561</u>
Total all funds	\$2,354,714	\$402,405	\$2,757,119
Less estimated income	<u>170,000</u>	<u>2,587,119</u>	<u>2,757,119</u>
Total general fund	\$2,184,714	(\$2,184,714)	\$0
Full-time equivalent positions	9.00	1.00	10.00

**SECTION 2. AMENDMENT.** Subsection 5 of section 10-04-03 of the North Dakota Century Code is amended and reenacted as follows:

5. A special fund is established in the state treasury and designated as the securities department special fund. All fees, civil penalties, or other moneys collected under this chapter must be deposited in the general fund of the state treasury securities department special fund, except funds permitted to be deposited into the investor education and technology fund under subsection 4 or civil penalties collected from enforcement actions for the purpose of distribution to aggrieved investors, which may be deposited in the investor restitution fund. Funds in the investor restitution fund are appropriated to the securities commissioner on a continuing basis for distribution to aggrieved investors.
  - a. The moneys deposited in the securities department special fund are reserved for use by the securities department to defray the expenses of the department in the discharge of administrative and regulatory powers and duties of the department as prescribed by law. Deposits under this subdivision are subject to the applicable laws relating to the appropriations of state funds and to the deposit and expenditure of state moneys. The securities commissioner is responsible for the proper expenditure of these moneys as provided by law.

- b. The office of management and budget shall transfer any balance in the securities department special fund in excess of the amounts necessary for department expenditures pursuant to the department's biennial appropriation to the general fund.

Approved April 15, 2019

Filed April 15, 2019

**CHAPTER 37****SENATE BILL NO. 2012**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of human services; to create and enact two new sections to chapter 50-06 of the North Dakota Century Code, relating to peer support specialist certification and the establishment of a community behavioral health program; to amend and reenact subsection 9 of section 50-06.4-10 and sections 50-24.1-31, 50-24.1-37, and 54-27-25 of the North Dakota Century Code, relating to the brain injury advisory council, optional medical assistance for children, the Medicaid expansion program, and tobacco settlement trust fund allocations; to provide a statement of legislative intent; to provide for transfers; to provide for a legislative management report; to provide for a legislative management study; to provide an exemption; to provide an effective date; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

## Subdivision 1.

## MANAGEMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$26,280,139	(\$6,057,639)	\$20,222,500
Operating expenses	116,315,826	31,908,694	148,224,520
Capital assets	0	50,000	50,000
Grants	<u>204,000</u>	<u>(204,000)</u>	<u>0</u>
Total all funds	\$142,799,965	\$25,697,055	\$168,497,020
Less estimated income	<u>85,679,558</u>	<u>18,127,188</u>	<u>103,806,746</u>
Total general fund	\$57,120,407	\$7,569,867	\$64,690,274

## Subdivision 2.

## PROGRAM AND POLICY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$62,782,944	\$6,211,929	\$68,994,873
Operating expenses	125,299,436	25,662,147	150,961,583
Capital assets	10,000	0	10,000
Grants	441,420,827	11,933,680	453,354,507
Grants - medical assistance	<u>2,373,678,247</u>	<u>368,479,473</u>	<u>2,742,157,720</u>
Total all funds	\$3,003,191,454	\$412,287,229	\$3,415,478,683



Less estimated income	<u>1,945,157,519</u>	<u>287,410,619</u>	<u>2,232,568,138</u>
Total general fund	\$1,058,033,935	\$124,876,610	\$1,182,910,545

Subdivision 3.

## FIELD SERVICES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Human service centers	\$196,049,489	\$8,651,654	\$204,701,143
Institutions	<u>140,421,224</u>	<u>4,025,921</u>	<u>144,447,145</u>
Total all funds	\$336,470,713	\$12,677,575	\$349,148,288
Less estimated income	<u>138,543,705</u>	<u>(4,458,085)</u>	<u>134,085,620</u>
Total general fund	\$197,927,008	\$17,135,660	\$215,062,668

Subdivision 4.

## COUNTY SOCIAL SERVICE FINANCING

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
County social services	\$0	\$173,700,000	\$173,700,000
Total special funds	\$0	\$173,700,000	\$173,700,000

Subdivision 5.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$1,313,081,350	\$149,582,137	\$1,462,663,487
Grand total special funds	<u>2,169,380,782</u>	<u>474,779,722</u>	<u>2,644,160,504</u>
Grand total all funds	\$3,482,462,132	\$624,361,859	\$4,106,823,991
Full-time equivalent positions	2,162.23	68.00	2,230.23

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Medicaid expansion - fee schedule enhancement	\$226,000,000	\$0
County social service pilot program	160,700,000	0
Child care licensing and data system	3,000,000	0
Health information network and care coordination	40,800,000	0
Children's behavioral health services pilot project	150,000	0
Technology projects	0	13,785,658
Capital projects - life skills and transition center	0	4,277,165
Capital projects - state hospital	0	2,493,500
Medically complex children provider funding adjustment	0	977,603
Hyperbaric oxygen therapy grant	0	335,000
State hospital study	0	<u>200,000</u>
Total all funds	\$430,650,000	\$22,068,926
Less estimated income	<u>404,500,000</u>	<u>20,556,323</u>
Total general fund	\$26,150,000	\$1,512,603

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of human services shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Peer support certification.**

The behavioral health division shall establish and implement a program for the certification of peer support specialists. In developing the program, the division shall:

1. Define a peer support specialist;
2. Establish eligibility requirements for certification;
3. Establish application procedures and standards for the approval or disapproval of applications for certification;
4. Enter reciprocity agreements with other states as deemed appropriate to certify nonresident applicants registered under the laws of other states having requirements for peer support specialists; and
5. Establish continuing education and certification renewal requirements.

**SECTION 4.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Community behavioral health program.**

1. The department of human services shall establish and implement a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions.
2. In developing the program, the department shall:
  - a. Establish a referral and evaluation process for access to the program.
  - b. Establish eligibility criteria that includes consideration of behavioral health condition severity.
  - c. Establish discharge criteria and processes.
  - d. Develop program oversight and evaluation processes that include outcome and provider reporting metrics.
  - e. Establish a system through which the department:
    - (1) Contracts with and pays behavioral health service providers.
    - (2) Supervises, supports, and monitors referral caseloads and the provision of services by contract behavioral health service providers.

- (3) Requires contract behavioral health service providers to accept eligible referrals and to provide individualized care delivered through integrated multidisciplinary care teams.
- (4) Provides payments to contract behavioral health service providers on a per-month per-referral basis based on a pay-for-performance model that includes consideration of identified outcomes and the level of services required.

**SECTION 5. AMENDMENT.** Subsection 9 of section 50-06.4-10 of the North Dakota Century Code is amended and reenacted as follows:

- 9. The department shall ~~provide the council with administrative contract with a private, nonprofit agency that does not provide brain injury services, to facilitate and provide support services to the council.~~

<sup>8</sup> **SECTION 6. AMENDMENT.** Section 50-24.1-31 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-31. Optional medical assistance for families of children with disabilities.**

The department of human services shall establish and implement a buyin program under the federal Family Opportunity Act enacted as part of the Deficit Reduction Act of 2005 [Pub. L. 109-171; 120 Stat. 4; 42 U.S.C. 1396] to provide medical assistance and other health coverage options to families of children with disabilities and whose net income does not exceed two hundred fifty percent of the federal poverty line.

**SECTION 7. AMENDMENT.** Section 50-24.1-37 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-37. Medicaid expansion - Legislative management report. (Effective January 1, 2014, through July 31, 2019) - Contingent repeal - See note)**

- 1. The department of human services shall expand medical assistance coverage as authorized by the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] to individuals under sixty-five years of age with income below one hundred thirty-eight percent of the federal poverty level, ~~based on modified adjusted gross income line published by the federal office of management and budget applicable to the household size.~~
- 2. The department of human services shall inform new enrollees in the medical assistance expansion program that benefits may be reduced or eliminated if federal participation decreases or is eliminated.
- 3. The department shall implement the expansion by bidding through private carriers or utilizing the health insurance exchange.
- 4. The contract between the department and the private carrier must:

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<sup>8</sup> Section 50-24.1-31 was also amended by section 33 of House Bill No. 1115, chapter 408.

- a. Provide a reimbursement methodology for all medications and dispensing fees which identifies the minimum amount paid to pharmacy providers for each medication. The reimbursement methodology, at a minimum, must:
    - (1) Be available on the department's website; and
    - (2) Encompass all types of pharmacy providers regardless of whether the pharmacy benefits are being paid through the private carrier or contractor or subcontractor of the private carrier under this section.
  - b. Provide full transparency of all costs and all rebates in aggregate.
  - c. Allow an individual to obtain medication from a pharmacy that provides mail order service; however, the contract may not require mail order to be the sole method of service and must allow for all contracted pharmacy providers to dispense any and all drugs included in the benefit plan and allowed under the pharmacy provider's license.
  - d. Ensure that pharmacy services obtained in jurisdictions other than this state and its three contiguous states are subject to prior authorization and reporting to the department for eligibility verification.
  - e. Ensure the payments to pharmacy providers do not include a required payback amount to the private carrier or one of the private carrier's contractors or subcontractors which is not representative of the amounts allowed under the reimbursement methodology provided in subdivision a.
5. The contract between the department and the private carrier must provide the department with full access to provider reimbursement rates. The department shall consider provider reimbursement rate information in selecting a private carrier under this section. Before August first of each even-numbered year, the department shall submit a report to the legislative management regarding provider reimbursement rates under the medical assistance expansion program. This report may provide cumulative data and trend data but may not disclose identifiable provider reimbursement rates.
  6. Provider reimbursement rate information received by the department under this section and any information provided to the department of human services or any audit firm by a pharmacy benefit manager under this section is confidential, except the department may use the reimbursement rate information to prepare the report to the legislative management as required under this section.

**SECTION 8. AMENDMENT.** Section 50-24.1-37 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-37. Medicaid expansion - Legislative management report. (Effective January 1, 2014, through July 31, 20192021 - Contingent repeal - See note)**

1. The department of human services shall expand medical assistance coverage as authorized by the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] to individuals under sixty-five years of age with income below one hundred thirty-eight percent of the federal poverty level, ~~based on modified adjusted gross income~~ line published by the federal office of management and budget applicable to the household size.

2. The department of human services shall inform new enrollees in the medical assistance expansion program that benefits may be reduced or eliminated if federal participation decreases or is eliminated.
3. The Except for pharmacy services, the department shall implement the expansion by bidding through private carriers or utilizing the health insurance exchange.
4. ~~The contract between the department and the private carrier must:~~
  - a. ~~Provide a reimbursement methodology for all medications and dispensing fees which identifies the minimum amount paid to pharmacy providers for each medication. The reimbursement methodology, at a minimum, must:~~
    - (1) ~~Be available on the department's website; and~~
    - (2) ~~Encompass all types of pharmacy providers regardless of whether the pharmacy benefits are being paid through the private carrier or contractor or subcontractor of the private carrier under this section.~~
  - b. ~~Provide full transparency of all costs and all rebates in aggregate.~~
  - c. ~~Allow an individual to obtain medication from a pharmacy that provides mail order service; however, the contract may not require mail order to be the sole method of service and must allow for all contracted pharmacy providers to dispense any and all drugs included in the benefit plan and allowed under the pharmacy provider's license.~~
  - d. ~~Ensure that pharmacy services obtained in jurisdictions other than this state and its three contiguous states are subject to prior authorization and reporting to the department for eligibility verification.~~
  - e. ~~Ensure the payments to pharmacy providers do not include a required payback amount to the private carrier or one of the private carrier's contractors or subcontractors which is not representative of the amounts allowed under the reimbursement methodology provided in subdivision a.~~
5. The contract between the department and the private carrier must provide the department with full access to provider reimbursement rates. The department shall consider provider reimbursement rate information in selecting a private carrier under this section. Before August first of each even-numbered year, the department shall submit a report to the legislative management regarding provider reimbursement rates under the medical assistance expansion program. This report may provide cumulative data and trend data but may not disclose identifiable provider reimbursement rates.
- ~~6-5.~~ Provider reimbursement rate information received by the department under this section and any information provided to the department of human services or any audit firm by a pharmacy benefit manager under this section is confidential, except the department may use the reimbursement rate information to prepare the report to the legislative management as required under this section.

**SECTION 9. AMENDMENT.** Section 54-27-25 of the North Dakota Century Code is amended and reenacted as follows:

**54-27-25. Tobacco settlement trust fund - Interest on fund - Uses. (Effective through June 30, 2019)**

1. There is created in the state treasury a tobacco settlement trust fund. The fund consists of the tobacco settlement dollars obtained by the state under subsection IX(c)(1) of the master settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Except as provided in subsection 2, moneys received by the state under subsection IX(c)(1) must be deposited in the fund. Interest earned on the fund must be credited to the fund and deposited in the fund. The principal and interest of the fund may be appropriated to the attorney general for the purpose of enforcing the master settlement agreement and any disputes with the agreement. All remaining principal and interest of the fund must be allocated as follows:
  - a. Transfers to a community health trust fund to be administered by the state department of health. The state department of health may use funds as appropriated for community-based public health programs and other public health programs, including programs with emphasis on preventing or reducing tobacco usage in this state. Transfers under this subsection must equal fifty-five percent of total annual transfers from the tobacco settlement trust fund. Transfers to the water development trust fund to be used to address the long-term water development and management needs of the state. Transfers under this subsection must equal forty-five percent of the total annual transfers from the tobacco settlement trust fund.
2. There is created in the state treasury a tobacco prevention and control trust fund. The fund consists of the tobacco settlement dollars obtained by the state under section IX(c)(2) of the agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Interest earned on the fund must be credited to the fund and deposited in the fund. Moneys received into the fund are to be used as appropriated by the legislative assembly.
3. Transfers to the funds under this section must be made within thirty days of receipt by the state.

**Tobacco settlement trust fund - Interest on fund - Uses. (Effective after June 30, 2019)**

1. There is created in the state treasury a tobacco settlement trust fund. The fund consists of the tobacco settlement dollars obtained by the state under subsection IX(c)(1) of the master settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Except as provided in subsection 2, moneys received by the state under subsection IX(c)(1) must be deposited in the fund. ~~Interest earned on the fund must be credited to the fund and deposited in the fund. The principal and interest of the fund may be appropriated to the attorney general for the purpose of enforcing the master settlement agreement and any disputes with the agreement. All remaining principal and interest of the fund must be allocated as follows:~~

- a. ~~TransfersMoneys in the fund must be transferred within thirty days of receipt by the state~~ to a community health trust fund to be administered by the state department of health. The state department of health may use funds as ~~Moneys in the fund may be~~ appropriated for community-based public health programs and other public health programs, including programs with emphasis on preventing or reducing tobacco usage in this state. ~~Transfers under this subsection must equal ten percent of total annual transfers from the tobacco settlement trust fund.~~
  - b. ~~Transfers to the common schools trust fund to become a part of the principal of that fund. Transfers under this subsection must equal forty five percent of total annual transfers from the tobacco settlement trust fund.~~
  - c. ~~Transfers to the water development trust fund to be used to address the long term water development and management needs of the state. Transfers under this subsection must equal forty five percent of the total annual transfers from the tobacco settlement trust fund.~~
2. There is created in the state treasury a tobacco prevention and control trust fund. The fund consists of the tobacco settlement dollars obtained by the state under section IX(c)(2) of the agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Interest earned on the fund must be credited to the fund and deposited in the fund. Moneys received into the fund are to be used as appropriated by the legislative assembly.
  3. ~~Transfers to the funds under this section must be made within thirty days of receipt by the state.~~

#### **SECTION 10. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.**

Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority between line items within subdivisions 1, 2, and 3 of section 1 of this Act for the biennium beginning July 1, 2019, and ending June 30, 2021, as requested by the department of human services. The department of human services shall notify the legislative council of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2020, any transfer made in excess of \$50,000 and to the appropriations committees of the sixty-seventh legislative assembly regarding any transfers made pursuant to this section.

#### **SECTION 11. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.**

Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority from line items within subdivisions 1, 2, and 3 of section 1 of this Act to subdivision 4 of section 1 of this Act for the biennium beginning July 1, 2019, and ending June 30, 2021, as requested by the department of human services. The department of human services shall notify the legislative council of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2020, any transfer made in excess of \$50,000 and to the appropriations committees of the sixty-seventh legislative assembly regarding any transfers made pursuant to this section.

**SECTION 12. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line items in subdivisions 1 and 3 of section 1 of this Act include the sum of \$11,490,695 from the strategic investment and improvements fund for information technology and capital projects.

**SECTION 13. ESTIMATED INCOME - HUMAN SERVICE FINANCE FUND.** The estimated income line item in subdivision 4 of section 1 of this Act includes the sum of \$173,700,000 from the human service finance fund for state-paid economic assistance and social and human services.

**SECTION 14. ESTIMATED INCOME - TOBACCO PREVENTION AND CONTROL TRUST FUND.** The estimated income line item in subdivision 2 of section 1 of this Act includes the sum of \$6,000,000 from the tobacco prevention and control trust fund for defraying expenses in the medical services division.

**SECTION 15. ESTIMATED INCOME - COMMUNITY HEALTH TRUST FUND.** The estimated income line item in subdivision 2 of section 1 of this Act includes the sum of \$32,400,000 from the community health trust fund for defraying expenses in the medical services division.

**SECTION 16. ESTIMATED INCOME - HEALTH CARE TRUST FUND - NURSING HOME OPERATING MARGIN ADJUSTMENT.** The estimated income line item in subdivision 2 of section 1 of this Act includes the sum of \$1,000,000 from the health care trust fund and \$1,062,000 from other funds derived from federal funds. These funds must be used to increase the nursing facility operating margin up to 4.4 percent for the period beginning January 1, 2020, and ending June 30, 2021. Notwithstanding any other provision of law, the draft appropriations acts submitted to the legislative assembly for the 2021-23 biennium pursuant to section 54-44.1-06 may not contain a nursing facility operating margin in excess of 3.74 percent.

**SECTION 17. EXPENDITURES MAY NOT EXCEED APPROPRIATION - MEDICAL ASSISTANCE EXPANSION PROGRAM.**

1. Subdivision 2 of section 1 of this Act includes the sum of \$567,367,511, of which \$60,776,487 is from the general fund, for the medical assistance expansion program for the biennium beginning July 1, 2019, and ending June 30, 2021. The expenditures for individuals eligible for the medical assistance expansion program may not exceed this amount. For purposes of this section:
  - a. Expenditures do not include those made for individuals identified as medically frail and who receive services through the traditional Medicaid program administered by the department of human services for which there is a separate appropriation of \$5,185,101 included in subdivision 2 of section 1 of this Act.
  - b. Expenditures do not include prescription drugs for the medical assistance expansion program population which is administered by the department of human services through its fee-for-service Medicaid program for which there is a separate appropriation of \$52,548,356 included in subdivision 2 of section 1 of this Act.
  - c. Expenditures do not include funding from the federal health insurance provider fee for which a separate appropriation of \$9,619,987 is included in subdivision 2 of section 1 of this Act.
2. The department of human services may exceed appropriations for increases in medical assistance expansion program caseload and for the addition of coverage consistent with the traditional Medicaid 1915i state plan.
3. The managed care organization under contract with the department to manage the medical assistance expansion program shall reimburse providers



within the same provider type and specialty at consistent levels and with consistent methodology and may not provide incentive, quality, or supplemental payments to providers, unless part of a value-based program offered to all eligible providers and approved by the department. The managed care organization may consider urban and rural providers as different provider types. Critical access hospitals may not be paid less than one hundred percent of Medicare allowable costs.

4. The managed care organization and the department of human services shall ensure payments to Indian or Tribal 638 health care providers, federally qualified health centers, and rural health clinics meet the federally required minimum levels of reimbursement.
5. The department of human services shall ensure providers within the same provider type and specialty are reimbursed at consistent levels and with consistent methodology and shall ensure the capitation rates under risk contracts are actuarially sound and are adequate to meet managed care organization contractual requirements regarding availability of services, assurance of adequate capacity and services, and coordination and continuity of care.

**SECTION 18. PLACEMENT OF INDIVIDUALS IN INSTITUTIONS FOR MENTAL DISEASE - REPORT TO LEGISLATIVE MANAGEMENT.** During the biennium beginning July 1, 2019, and ending June 30, 2021, the department of human services shall develop a statewide plan to address acute psychiatric and residential care needs. The statewide plan must address the following:

1. The size and use of the state hospital;
2. The potential need for state-operated or private acute facilities in areas of the state outside the city of Jamestown;
3. The potential to expand private providers' offering of acute psychiatric care and residential care to fulfill the identified need, including how the implementation of services authorized by the sixty-sixth legislative assembly affects the balance of inpatient, residential, and community-based services;
4. The impact of department efforts to adjust crisis services and other behavioral health services provided by the regional human service centers; and
5. The potential use of available Medicaid authorities, including waivers or plan amendments.

Prior to October 1, 2020, the department shall report to the legislative management on the statewide plan, along with any legislation required to implement the plan.

**SECTION 19. REVISED PAYMENT METHODOLOGY FOR NURSING FACILITY SERVICES - REPORT TO LEGISLATIVE MANAGEMENT.** The department of human services shall develop an implementation plan for a revised payment methodology for nursing facility services that must include recommendations for:

1. Methods of reimbursement for nursing facility cost categories including direct patient care, administrative expenses, and capital assets;

2. Considerations regarding establishing peer groups for payments based on factors such as geographical location or nursing facility size;
3. The feasibility and desirability of equalizing payments for nursing facilities in the same peer group, including the time frame for equalization; and
4. Payment incentives related to care quality or operational efficiency.

The executive director of the department of human services and representatives of the nursing home industry shall appoint a committee to advise the department on the development of the revised payment methodology for nursing facility services. Before October 1, 2020, the department shall report to the legislative management regarding the plan to implement the revised payment methodology. The estimated costs related to the implementation of the revised payment methodology must be included in the department's 2021-23 biennium budget request submitted to the sixty-seventh legislative assembly.

**SECTION 20. HYPERBARIC OXYGEN THERAPY PILOT PROGRAM GRANT.**

Subdivision 2 of subsection 1 of this Act includes the sum of \$335,000 from the general fund for the purpose of providing a grant to an entity to develop a hyperbaric oxygen therapy pilot program.

**SECTION 21. ADAPTIVE SKIING GRANT - EXEMPTION.** Subdivision 2 of section 1 of this Act includes the sum of \$200,000 from the general fund for a grant for an adaptive skiing program affiliated with a winter park that is located in a county of less than 10,000 individuals. The requirements of chapter 54-44.4 do not apply to the selection of a grantee, the grant award, or payments made under this section.

**SECTION 22. PERMANENT HOUSING PROGRAM GRANTS - EXEMPTION - REPORT TO LEGISLATIVE MANAGEMENT.** Subdivision 3 of section 1 of this Act includes the sum of \$925,000 from the general fund to provide grants to entities to provide services to individuals experiencing chronic homelessness in the northeast and southeast human service regions. The requirements of chapter 54-44.4 do not apply to the selection of grantees, the grant awards, or payments made under this section. The department of human services' oversight for these services is limited to receiving information relating to annual service numbers and the expenditure of appropriated funds for these services. The department shall develop and implement standardized processes for the distribution of the permanent housing grants.

The funds identified for permanent housing grants may be used only for services not reimbursed by other funding sources. The department of human services, in cooperation with the grant recipients, shall provide reports to the legislative management during the 2019-20 interim regarding the services provided by the programs, the nonidentifiable demographics of the individuals receiving services, and the other funding or reimbursement being used to support the programs.

**SECTION 23. SCHOOL BEHAVIORAL HEALTH GRANTS.** Subdivision 2 of section 1 of this Act includes the sum of \$1,500,000 from the general fund for the purpose of providing behavioral health services and support grants to school districts to address student behavioral health needs. To be eligible to receive a student behavioral health grant, a school district must submit a plan to the department of human services detailing the school district's collaboration with other regional school districts regarding student behavioral health needs and the use of grant funding to develop student behavioral health interventions. A school district may not use grant funding to duplicate or fund existing services. The department of human services

shall provide student behavioral health grants only during the second year of the 2019-21 biennium.

**SECTION 24. SCHOOL BEHAVIORAL HEALTH PROGRAM.** Subdivision 2 of section 1 of this Act includes the sum of \$300,000 from the general fund for a school behavioral health program. The department of human services shall use a portion of this funding for behavioral health pilot projects in a rural school and a tribal school.

**SECTION 25. EXEMPTION.** The amount appropriated for the replacement of the Medicaid management information system and related projects in chapter 50 of the 2007 Session Laws and chapter 38 of the 2011 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from these appropriations approved under section 54-44.1-11 for continuation into the 2009-11 biennium, then the 2011-13 biennium, then the 2013-15 biennium, then the 2015-17 biennium, and then the 2017-19 biennium are available for the completion of the Medicaid management information system and related projects during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 26. EXEMPTION.** The amount appropriated for the modification of the department of human services' eligibility systems in chapter 578 of the 2011 Special Session Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation approved under section 54-44.1-11 for continuation into the 2013-15 biennium, then the 2015-17 biennium, and then the 2017-19 biennium are available for the completion of the modification of the eligibility systems project during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 27. EXEMPTION.** The amount appropriated for the development of the electronic health records system in chapter 12 of the 2013 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation approved under section 54-44.1-11 for continuation into the 2015-17 biennium and then the 2017-19 biennium are available for the completion of the electronic health records system during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 28. EXEMPTION.** The sum of \$3,000,000 of federal funds appropriated for the development of the child care licensing and data system in chapter 11 of the 2017 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for the completion of the child care licensing and data system during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 29. EXEMPTION.** The sum of \$40,800,000 of federal and other funds appropriated for the development of the health information network and care coordination project in chapter 11 of the 2017 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for the completion of the health information network and care coordination project during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 30. EXEMPTION.** The amount appropriated for the development of the electronic visit verification project in chapter 11 of the 2017 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for the completion of the electronic visit verification project during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 31. EXEMPTION.** The sum of \$728,207 from the general fund appropriated for the department's operating expenses for the legal advisory unit in

chapter 11 of the 2017 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation may be used for the Ireland lawsuit or its settlement during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 32. EXEMPTION.** The sum of \$150,000 from the general fund appropriated for the purpose of establishing a children's prevention and early intervention behavioral health services pilot project in chapter 333 of the 2017 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to be used for the completion of the children's prevention and early intervention behavioral health services pilot project during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 33. CONVEYANCE OF LAND AUTHORIZED - STATE HOSPITAL - EXEMPTION.** The state of North Dakota by and through the department of human services may convey real property associated with the state hospital in Stutsman County to the department of corrections and rehabilitation. The department of human services may convey building 2404, formerly known as the nursing residence building and Tompkins building, and surrounding property on the terms and conditions determined appropriate by the department of human services and the attorney general. Sections 54-01-05.2 and 54-01-05.5 do not apply to this conveyance.

**SECTION 34. CAPITAL PROJECTS AND PAYMENTS.** During the period beginning with the effective date of this Act, and ending June 30, 2021, the department of human services is authorized to expend funds for the following capital projects and payments:

1. The construction of a heating system and plant building at the state hospital;
2. The renovation of the cedar grove and maplewood buildings at the life skills and transition center, including the construction of a structure to connect the buildings;
3. The demolition of the refectory and pleasant view buildings at the life skills and transition center; and
4. The payment of special assessments at the state hospital.

**SECTION 35. DEVELOPMENTAL DISABILITIES CASE MANAGEMENT.** The department of human services shall provide case management services for individuals with a developmental disability within the ratio provided pursuant to North Dakota Administrative Code for the biennium beginning July 1, 2019, and ending June 30, 2021. If case management services for individuals with a developmental disability exceed the ratio requirement provided in the North Dakota Administrative Code, the department of human services may hire temporary staff or the department of human services may propose a change to North Dakota Administrative Code to meet the ratio requirement.

**SECTION 36. BEHAVIORAL HEALTH PROVIDER PROCESS AND OUTCOME MEASURES.** Behavioral health service providers that receive funding from the department of human services shall submit process and outcome measures to the department of human services for programs and services supported by state funding during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 37. TELEPHONE SUPPORT AND DIRECTORY SERVICES.** The vendor of telephone and directory services, under contract with the department of

human services, shall include private behavioral health service providers in the vendor's directory at no cost to the private behavioral health service providers during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 38. ADULT COMPANION SERVICES.** The department of human services shall include adult companion services as an allowable service under the home and community-based services Medicaid waiver, effective for dates of service on or after January 1, 2020.

**SECTION 39. ADULT RESIDENTIAL RATES - REBASING.** The department of human services shall rebase adult residential rates, effective for dates of service on or after January 1, 2020. The department of human services shall request cost information from adult residential providers who are enrolled as Medicaid home and community-based waiver providers and serve clients who receive memory care services or have a traumatic brain injury.

**SECTION 40. TARGETED CASE MANAGEMENT - SERIOUS EMOTIONAL DISTURBANCE.** The department of human services shall expand the types of providers recognized as Medicaid providers of targeted case management for individuals with a serious emotional disturbance for dates of service beginning on or after October 1, 2019. If this expansion results in expenditures that exceed the amount appropriated to the department of human services for this service, the department shall request a deficiency appropriation from the sixty-seventh legislative assembly for any shortfall.

**SECTION 41. TARGETED CASE MANAGEMENT - SERIOUS MENTAL ILLNESS.** The department of human services shall expand the types of providers recognized as Medicaid providers of targeted case management for individuals with a serious mental illness for dates of service beginning on or after October 1, 2019. If this expansion results in expenditures that exceed the amount appropriated to the department of human services for this service, the department shall request a deficiency appropriation from the sixty-seventh legislative assembly for any shortfall.

**SECTION 42. WITHDRAWAL MANAGEMENT.** The department of human services shall include withdrawal management as a covered service in the Medicaid state plan during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 43. IMPLEMENTATION OF 1915i MEDICAID STATE PLAN.** The department of human services shall implement and manage a 1915i Medicaid state plan amendment for children and adults, for the period beginning July 1, 2020, and ending June 30, 2021. The requirements of chapter 54-44.4 do not apply to the addition of coverage consistent with the traditional Medicaid 1915i state plan to the managed care contract between the department of human services and the Medicaid expansion managed care organization. The department of human services and the Medicaid managed care organization shall ensure the appropriate contract amendment is adopted for coverage to begin July 1, 2020.

**SECTION 44. HOME AND COMMUNITY-BASED SERVICES TARGETED POPULATION.** The department of human services shall adopt rules, on or before January 1, 2021, establishing a process and requirements to involve public and private entities in identifying individuals who are at serious risk of accessing Medicaid-funded long-term care in a nursing facility and inform them about home and community-based services options.

**SECTION 45. AUTISM SPECTRUM DISORDER TASK FORCE.** The department of human services shall consult with the autism spectrum disorder task force at the November 2019 task force meeting to evaluate biennium autism spectrum disorder

Medicaid waiver expenditures to date. Based on input from the task force, the department may expand the number of slots or increase the ages covered by the autism spectrum disorder Medicaid waiver for the remainder of the 2019-21 biennium.

**SECTION 46. AUTISM SPECTRUM DISORDER VOUCHER PROGRAM.** The department of human services shall propose changes to North Dakota administrative code to seek additional flexibility for the administration of the autism spectrum disorder voucher program to ensure more families can be served within available appropriations. The proposed administrative code changes should consider changes that include a voucher that is solely for technology support and one that is for in-home supports; adding case management or parent-to-parent support as an allowable service for voucher funds; and reducing the amount of time during which a household may use approved voucher funds.

**SECTION 47. IMPLEMENTATION OF BEHAVIORAL HEALTH STUDY RECOMMENDATIONS - REPORT TO LEGISLATIVE MANAGEMENT.** Before August 1, 2020, the department of human services shall provide a report to the legislative management regarding the implementation of the human services research institute report recommendations.

**SECTION 48. LEGISLATIVE MANAGEMENT STUDY - HEALTH CARE DELIVERY SYSTEM.** During the 2019-20 interim, the legislative management shall consider studying the delivery of health care in the state. The study must review the needs and future challenges of the North Dakota health care delivery system, including rural access to primary health care, the use of emergency medical services, strategies to better serve residents, and the role of health care services in the future development of the state. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 49. LEGISLATIVE INTENT - UTILIZATION RATE ADJUSTMENTS.** It is the intent of the sixty-sixth legislative assembly that the department of human services seek a deficiency appropriation from the sixty-seventh legislative assembly for any expenditures that exceed appropriated amounts as a result of reductions made in estimated utilization rates during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 50. EFFECTIVE DATE.** Section 8 of this Act becomes effective on January 1, 2020.

**SECTION 51. EXPIRATION DATE.** Section 7 of this Act is effective through December 31, 2019, and after that date is ineffective.

**SECTION 52. EMERGENCY.** The sum of \$6,770,665 in subdivision 3 of section 1 of this Act for capital projects at the state hospital and life skills and transition center and section 34 of this Act are declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

**CHAPTER 38**

**SENATE BILL NO. 2013**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the state library, the school for the deaf, and the North Dakota vision services - school for the blind; to amend and reenact sections 15.1-02-02, 15.1-18-10, and 15.1-21-02.6 of the North Dakota Century Code, relating to the salary of the superintendent of public instruction, teaching licenses, and the North Dakota scholarship; to provide for a report to the legislative assembly; to provide for a legislative management study; to provide exemptions; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of public instruction, the state library, the school for the deaf, and North Dakota vision services - school for the blind for the purpose of defraying the expenses of those agencies, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

Subdivision 1.

**DEPARTMENT OF PUBLIC INSTRUCTION**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$17,439,176	\$587,859	\$18,027,035
Operating expenses	30,165,005	3,805,942	33,970,947
Integrated formula payments	1,750,204,163	347,998,266	2,098,202,429
Grants - special education	19,300,000	4,700,000	24,000,000
Grants - transportation	55,400,000	1,100,000	56,500,000
Grants - other grants	254,062,705	33,000,000	287,062,705
Grants - program grants	6,210,000	1,470,000	7,680,000
Grants - passthrough grants	2,898,000	(34,236)	2,863,764
PowerSchool	5,500,000	0	5,500,000
Transportation efficiency	30,000	(30,000)	0
National board certification	120,000	(12,000)	108,000
State automated reporting system rewrite	0	1,200,000	1,200,000
Total all funds	\$2,141,329,049	\$393,785,831	\$2,535,114,880
Less estimated income	705,727,065	108,026,678	813,753,743
Total general fund	\$1,435,601,984	\$285,759,153	\$1,721,361,137
Full-time equivalent positions	91.75	(2.50)	89.25

Subdivision 2.

## STATE LIBRARY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,152,758	\$147,577	\$4,300,335
Operating expenses	1,604,075	17,842	1,621,917
Grants	<u>2,109,028</u>	<u>124,500</u>	<u>2,233,528</u>
Total all funds	\$7,865,861	\$289,919	\$8,155,780
Less estimated income	<u>2,247,560</u>	<u>126,801</u>	<u>2,374,361</u>
Total general fund	\$5,618,301	\$163,118	\$5,781,419
Full-time equivalent positions	28.75	(1.00)	27.75

Subdivision 3.

## SCHOOL FOR THE DEAF

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,588,749	\$466,195	\$8,054,944
Operating expenses	2,026,543	(320,957)	1,705,586
Capital assets	158,678	270,000	428,678
Grants	<u>180,000</u>	<u>(140,000)</u>	<u>40,000</u>
Total all funds	\$9,953,970	\$275,238	\$10,229,208
Less estimated income	<u>2,465,444</u>	<u>234,914</u>	<u>2,700,358</u>
Total general fund	\$7,488,526	\$40,324	\$7,528,850
Full-time equivalent positions	45.61	(1.00)	44.61

Subdivision 4.

## NORTH DAKOTA VISION SERVICES - SCHOOL FOR THE BLIND

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,660,995	\$274,296	\$4,935,291
Operating expenses	773,206	42,615	815,821
Capital assets	<u>39,192</u>	<u>260,500</u>	<u>299,692</u>
Total all funds	\$5,473,393	\$577,411	\$6,050,804
Less estimated income	<u>1,079,247</u>	<u>253,568</u>	<u>1,332,815</u>
Total general fund	\$4,394,146	\$323,843	\$4,717,989
Full-time equivalent positions	28.50	(0.60)	27.90

Subdivision 5.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$1,453,102,957	\$286,286,438	\$1,739,389,395
Grand total special funds	<u>711,519,316</u>	<u>108,641,961</u>	<u>820,161,277</u>
Grand total all funds	\$2,164,622,273	\$394,928,399	\$2,559,550,672

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 one-time funding items included in the appropriation in section 1 of this Act:



<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Department of public instruction		
Regional education association merger grants	\$100,000	\$0
North Dakota governor's school science, technology, engineering, and mathematics programs	220,000	0
English language learner grants	500,000	0
Rapid enrollment grants	6,000,000	0
Integrated formula payments	185,000,000	0
State automated reporting system rewrite	0	1,200,000
State school aid formula rewrite	0	200,000
Total department of public instruction - all funds	\$191,820,000	\$1,400,000
Total department of public instruction - estimated income	<u>191,820,000</u>	<u>1,200,000</u>
Total department of public instruction - general fund	\$0	\$200,000
School for the deaf		
Extraordinary repairs	\$675,000	\$250,000
Equipment	28,000	20,000
Video equipment and software	30,000	0
Total school for the deaf - estimated income	\$733,000	\$270,000
North Dakota vision services - school for the blind		
Special assessments payoff	\$10,000	\$0
Heating and cooling upgrade	35,500	0
Replace water line	60,000	0
Carpet and reception upgrade	30,000	0
West wing roof repair	0	39,000
Other repairs	0	18,500
Daily living skills area remodel	0	25,000
South wing restroom remodel	0	120,000
Garage door replacement	0	16,000
Gymnasium floor replacement	0	42,000
Adaptive technology equipment	0	20,000
Total school for the blind - estimated income	\$135,500	\$280,500
Grand total - all funds	\$192,688,500	\$1,950,500
Grand total - estimated income	<u>192,688,500</u>	<u>1,750,500</u>
Grand total - general fund	\$0	\$200,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of public instruction, school for the deaf, and North Dakota vision services - school for the blind shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. APPROPRIATION - ESTIMATED INCOME - TUITION APPORTIONMENT.** The sum of \$377,764,000, included in the integrated formula payments line item in subdivision 1 of section 1 of this Act, is from the state tuition fund in the state treasury. Any additional amount in the state tuition fund that becomes available for distribution to public schools is appropriated to the department of public instruction for that purpose for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. ESTIMATED INCOME - FOUNDATION AID STABILIZATION FUND.** The estimated income line item in subdivision 1 of section 1 of this Act includes \$111,200,000 from the foundation aid stabilization fund in the state treasury, of which \$110,000,000 is for integrated formula payments and \$1,200,000 is for a rewrite of

the state automated reporting system, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. EXEMPTION - FUNDING TRANSFER - AUTHORIZATION.**

Notwithstanding section 54-16-04, the superintendent of public instruction may transfer up to \$4,000,000 from the integrated formula payments line item to the grants - special education line item, for the biennium beginning July 1, 2017, and ending June 30, 2019, for the purposes of providing special education grants. The superintendent of public instruction shall notify the office of management and budget of any transfer made pursuant to this section.

**SECTION 6. EXEMPTION - ADVANCED PLACEMENT PROGRAMS.**

Up to \$600,000 of the unexpended amount remaining from the appropriation for integrated formula payments, as authorized in subdivision 1 of section 1 of chapter 12 of the 2017 Session Laws, is not subject to the provisions of section 54-44.1-11 at the end of the 2017-19 biennium, and may be continued into the 2019-21 biennium for the purpose of providing advanced placement examinations, advanced placement teacher training, and the college ready English and mathematics programs.

**SECTION 7. INTEGRATED FORMULA PAYMENTS AND SPECIAL EDUCATION CONTRACTS EXPENDITURE AUTHORITY.**

The superintendent of public instruction may expend funds included in the integrated formula payments and grants - special education contracts line items in subdivision 1 of section 1 of this Act for paying grants for educational services that were due in the 2017-19 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2019. To be reimbursed under this section, claims must be properly supported and filed with the superintendent of public instruction by June 30, 2020.

**SECTION 8. GRANTS - SPECIAL EDUCATION DEFICIENCY AUTHORIZATION.**

If funds provided to the superintendent of public instruction in subdivision 1 of section 1 of this Act for grants - special education, for the biennium beginning July 1, 2019, and ending June 30, 2021, are not sufficient to meet special education contract obligations, the superintendent of public instruction shall request supplemental funding from the sixty-seventh legislative assembly.

**SECTION 9. GIFTED AND TALENTED PROGRAM - MEDICAID MATCHING FUNDING - DISTRIBUTION.**

1. The sum of \$800,000, included in the integrated formula payments line item in subdivision 1 of section 1 of this Act, must be distributed to reimburse school districts or special education units for gifted and talented programs upon the submission of an application that is approved in accordance with guidelines adopted by the superintendent of public instruction. The superintendent of public instruction shall encourage cooperative efforts for gifted and talented programs among school districts and special education units.
2. State school aid payments for special education must be reduced by the amount of matching funds required to be paid by school districts or special education units for students participating in the Medicaid program. Special education funds equal to the amount of the matching funds required to be paid by the school district or special education unit must be paid by the superintendent of public instruction to the department of human services on behalf of the school district or unit.

**SECTION 10. TRANSPORTATION GRANTS - DISTRIBUTION.**

1. During each year of the 2019-21 biennium, the superintendent of public instruction shall calculate the payment to which each school district is entitled based on the state transportation formula as it existed on June 30, 2001, except that the superintendent shall provide reimbursement at the rate of:
  - a. One dollar and eleven cents per mile for school buses having a capacity of ten or more passengers;
  - b. Fifty-two cents per mile for vehicles having a capacity of nine or fewer passengers;
  - c. Fifty cents per mile, provided:
    - (1) The student being transported is a student with a disability, as defined in chapter 15.1-32;
    - (2) The student's individualized education program plan requires that the student attend a public or a nonpublic school located outside the student's school district of residence;
    - (3) The student is transported by an adult member of the student's family;
    - (4) The student is transported in a vehicle furnished by the student's parents;
    - (5) The student's transportation is paid for by the student's parents; and
    - (6) The reimbursement does not exceed two round trips daily between the student's home and school.
  - d. Fifty cents per mile, one way, provided:
    - (1) The student being transported resides more than two miles from the public school that the student attends;
    - (2) The student is transported by an adult member of the student's family;
    - (3) The student is transported in a vehicle furnished by the student's parents; and
    - (4) The student's transportation is paid for by the student's parents.
  - e. Thirty cents per student for each one-way trip.
2. The superintendent of public instruction shall use the latest available student enrollment count in each school district in applying the provisions of subsection 1.
3. This section does not authorize the reimbursement of any costs incurred in providing transportation for student attendance at extracurricular activities or events.

**SECTION 11. PROGRAM GRANT POOL - CONTINUING EDUCATION GRANTS - FUNDING - DISTRIBUTION.** The grants - program grants line item in subdivision 1

of section 1 of this Act includes \$1,500,000 for a program grant pool. The superintendent of public instruction shall use the funding provided for various grant programs, including up to \$125,000, or so much of the sum as may be necessary, for continuing education grants, for the biennium beginning July 1, 2019, and ending June 30, 2021.

1. The superintendent of public instruction shall award grants in amounts up to \$1,200 to eligible recipients in chronological order, based on the date of an individual's application. An eligible recipient must:
    - a. (1) Be licensed to teach by the education standards and practices board;
    - (2) Have taught in this state during each of the last three school years; and
    - (3) Be enrolled at an institution of higher education in this state in either a master of education program in educational leadership or a program leading to a specialist diploma in educational leadership;
  - b. Be pursuing the requirements for a certificate in career development facilitation; or
  - c. Be pursuing a school counselor credential.
2. If any of the amount appropriated for this purpose remains after the superintendent of public instruction has awarded grants to all eligible recipients, the superintendent shall distribute that amount as an additional per student payment on a prorated basis, according to the latest available average daily membership of each school district.

**SECTION 12. PASSTHROUGH GRANTS - APPLICATION - DISTRIBUTION - REPORTING.** The grants - passthrough grants line item in subdivision 1 of section 1 of this Act includes \$2,863,764 for passthrough grants. The superintendent of public instruction shall determine the manner in which each passthrough grant is distributed but no more than one-half of the funding may be provided each year of the biennium. Annually grantees, as a condition of receiving the grant, must establish performance measures to be reviewed by the superintendent of public instruction. Grantees shall report annually to the superintendent of public instruction regarding performance based on the measures. The superintendent may not distribute the grant payment for the second year of the biennium until the grantee submits the annual report for the first year of the biennium. The superintendent of public instruction shall report to the appropriations committees of the sixty-seventh legislative assembly regarding funds granted, performance measures established for each grantee, and whether grantees met performance expectations.

**SECTION 13. REGIONAL EDUCATION ASSOCIATIONS - GRANTS-DISTRIBUTION.** The integrated formula payments line item in subdivision 1 of section 1 of this Act includes \$500,000 from the general fund for the purpose of providing annual grants to regional education associations for the biennium beginning July 1, 2019, and ending June 30, 2021. An annual grant of \$35,714 is provided to each regional education association that exists as of July 1, 2019. Regional education associations that merge during the 2019-21 biennium are entitled to the annual grants that would have been paid to each of the member associations.

**SECTION 14. EXEMPTION - INDIRECT COST ALLOCATION.** Notwithstanding section 54-44.1-15, the department of public instruction may deposit indirect cost recoveries in its operating account.

**SECTION 15. STATE AID TO PUBLIC LIBRARIES.** The grants line item in subdivision 2 of section 1 of this Act includes \$1,737,528 for aid to public libraries, of which no more than one-half may be expended during the fiscal year ending June 30, 2020.

**SECTION 16. EXEMPTION - SCHOOL FOR THE DEAF - HIGHER EDUCATION INTERPRETER GRANT PROGRAM DISTRIBUTION.** The grants line item in subdivision 3 of section 1 of this Act is for the purpose of providing grants to assist institutions under the control of the state board of higher education with the cost of interpreters and real-time captioning for students who are deaf or hard of hearing, for the biennium beginning July 1, 2019, and ending June 30, 2021. Moneys appropriated for this program are not subject to section 54-44.1-11. Funds must be distributed pursuant to the provisions of this section:

1. The school for the deaf shall develop a formula to determine the grant amount for which an institution is eligible. The formula must be based on an uniform hourly reimbursement.
2. To obtain a grant under this section, an institution shall submit to the school for the deaf, at the time and in the manner directed by the school, invoices showing the amount expended for interpreters and real-time captioning for students who are deaf or hard of hearing.
3. The school for the deaf may not distribute more than fifty percent of the amount appropriated during the first year of the biennium.
4. If any grant moneys remain undistributed at the end of the biennium, the school for the deaf shall provide additional prorated grants to institutions that incurred, during the biennium, hourly expenses in excess of the formula reimbursement level.
5. At the request of an institution under the control of the state board of higher education, the school for the deaf shall consult with the institution and provide advice regarding the provision of services most appropriate to meet a student's needs.

**SECTION 17. AMENDMENT.** Section 15.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-02. Salary.**

The annual salary of the superintendent of public instruction is ~~one hundred sixteen thousand nine hundred three dollars through June 30, 2016, and one hundred twenty thousand four hundred ten dollars thereafter~~ one hundred twenty-two thousand eight hundred ten dollars through June 30, 2020, and one hundred twenty-five thousand eight hundred eighty dollars thereafter.

<sup>9</sup> **SECTION 18. AMENDMENT.** Section 15.1-18-10 of the North Dakota Century Code as amended in section 5 of Senate Bill No. 2265, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**15.1-18-10. Specialty areas - Teacher qualification.**

Notwithstanding the requirements of this chapter:

1. An individual may teach art, business education, computer education, a foreign language, music, physical education, special education, and technology education at any grade level from kindergarten through grade eight, provided the individual:
  - a. Is licensed to teach by the education standards and practices board;
  - b. Is approved to teach in that area by the education standards and practices board; and
  - c. Meets all requirements set forth in rule by the superintendent of public instruction.
2. An individual may teach Native American languages provided the individual is an eminence-credentialed teacher.
3. An individual may teach in the areas of trade, industry, technical occupations, or health occupations, provided the individual has been issued a license to teach in such areas by the education standards and practices board.
4. An individual may teach in any subject, except elementary education, special education, mathematics, science, language arts, and social studies, if the individual:
  - a. Has a permit issued by the board and has a high school diploma; and
  - b. (1) Possesses at least four thousand hours over five years of relevant work experience in the subject area to be taught; or
    - (2) Possesses a certificate, permit, or degree in the subject area to be taught; ~~or~~
    - (3) Achieves a passing score on the Praxis content test.

**SECTION 19. AMENDMENT.** Section 15.1-21-02.6 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02.6. North Dakota scholarship - Amount - Applicability.**

1. a. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction either a North Dakota academic scholarship or a North Dakota career and technical education scholarship in the amount of seven hundred fifty dollars for each semester during which the student is enrolled full time at an accredited

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<sup>9</sup> Section 15.1-18-10 was also amended by section 1 of House Bill No. 1531, chapter 163, section 18 of Senate Bill No. 2015, chapter 40, and section 5 of Senate Bill No. 2265, chapter 149.

- institution of higher education in this state, maintains a cumulative grade point average of 2.75, and maintains progress toward degree completion.
- b. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction either a North Dakota academic scholarship or a North Dakota career and technical education scholarship in the amount of five hundred dollars for each quarter during which the student is enrolled full time at an accredited institution of higher education in this state, maintains a cumulative grade point average of 2.75, and maintains progress toward degree completion.
2. The state board shall monitor each scholarship recipient to ensure that the student meets the academic and other requirements of this section. Upon determining that a recipient student has failed to meet the requirements of this section, the board shall provide notification to the student within ten days.
  3. A student is not entitled to receive more than six thousand dollars under this section.
  4. The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.
  5. a. (1) This section does not require a student to be enrolled in consecutive semesters.  
(2) This section does not require a student to be enrolled in consecutive quarters.
  - b. A scholarship under this section is valid only for six academic years after the student's graduation from high school and may be applied to a graduate program.
6. A scholarship under this section is available to any eligible resident student who fulfills the requirements of section 15.1-21-02.4 or 15.1-21-02.5 and who:
    - a. Graduates from a high school in this state;
    - b. Graduates from a high school in a bordering state under chapter 15.1-29;
    - c. Graduates from a nonpublic high school in a bordering state while residing with a custodial parent in this state; or
    - d. Completes a program of home education supervised in accordance with chapter 15.1-23.
  7. a. For purposes of North Dakota scholarship eligibility under this section, "full-time" has the same meaning as the term is defined by the institution the student is attending.
  - b. A student who is enrolled less than full-time may retain scholarship eligibility if the student is in the final semester or quarter before graduation. The waiver of the full-time enrollment status requirement for scholarship eligibility may not apply to a student more than once.

- c. For the purpose of North Dakota scholarship eligibility under this section, "progress toward degree completion" means earning the following minimum number of credits after each semester or quarter term disbursement to qualify for the subsequent disbursement:
- (1) Twenty-four credits after disbursement two;
  - (2) Thirty-nine credits after disbursement three;
  - (3) Fifty-four credits after disbursement four;
  - (4) Sixty-nine credits after disbursement five;
  - (5) Eighty-four credits after disbursement six; and
  - (6) Ninety-nine credits after disbursement seven.

**SECTION 20. LEGISLATIVE MANAGEMENT STUDY - TRANSPORTATION.**

During the 2019-20 interim, the legislative management shall consider studying school transportation, including district routes, expenditures, reimbursement, and possible efficiencies. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 21. LEGISLATIVE MANAGEMENT STUDY - DUAL-CREDIT - ADVANCED PLACEMENT - DISTANCE EDUCATION COURSES.** During the 2019-20 interim, the legislative management shall consider studying dual-credit, advanced placement, and distance education courses. The study must include a review of early enrollment placement testing and the qualifications for dual-credit and advanced placement courses. The study also must include a review of the costs and amounts of funding necessary to provide all students access to dual-credit, advanced placement, and distance education courses, as well as the types of courses available and the delivery methods necessary to provide all students with access. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 22. EMERGENCY.** Section 5 of this Act is declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019



**CHAPTER 39**

**SENATE BILL NO. 2014**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the committee on protection and advocacy; and to provide a report to the legislative assembly.

**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 committee on protection and advocacy for the purpose of defraying the expenses of the committee on protection and advocacy, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Protection and advocacy operations	\$6,447,600	\$859,100	\$7,306,700
Total all funds	\$6,447,600	\$859,100	\$7,306,700
Less estimated income	3,488,601	505,534	3,994,135
Total general fund	\$2,958,999	\$353,566	\$3,312,565
Full-time equivalent positions	27.50	1.00	28.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Polycam machine	\$0	\$8,000
Accrued leave payments	<u>0</u>	<u>132,550</u>
Total all funds	\$0	\$140,550
Total other funds	<u>0</u>	<u>68,000</u>
Total general funds	\$0	\$72,550

The 2019-21 biennium one-time funding amounts are not part of the entity's base budget for the 2021-23 biennium. The protection and advocacy project shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 40

### SENATE BILL NO. 2015

(Appropriations Committee)

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 a continuing appropriation; to authorize a full-time equivalent position; to provide for a transfer; to create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to the recognition of legacy fund earnings; to amend and reenact section 6-09-49, section 15.1-18-10 as amended by section 18 of Senate Bill No. 2013, as approved by the sixty-sixth legislative assembly, sections 48-10-02 and 48-10-03, subsection 2 of section 54-06-24, section 54-06-30, and section 54-09-05 as amended by section 5 of Senate Bill No. 2002, as approved by the sixty-sixth legislative assembly, of the North Dakota Century Code, section 23 of House Bill No. 1003, as approved by the sixty-sixth legislative assembly, section 23 of House Bill No. 1014, as approved by the sixty-sixth legislative assembly, sections 1, 2, and 17 of House Bill No. 1018, as approved by the sixty-sixth legislative assembly, and section 18 of Senate Bill No. 2012, as approved by the sixty-sixth legislative assembly, relating to the infrastructure revolving loan fund, specialty area teacher qualifications, capitol grounds planning commission spending limits and authority to accept gifts, the state employee suggestion incentive program, state employee performance bonuses, the salary of the secretary of state, higher education line item transfer authority, a department of commerce nonresident nurse employment recruitment program; and a statewide plan for individuals in institutions for mental disease; to repeal section 54-06-24 of the North Dakota Century Code, relating to the state employee suggestion incentive program; to provide compensation guidelines; to provide a statement of legislative intent; to provide for a legislative management legacy fund earnings committee; to provide for a legislative management study; to provide for a report; to provide an exemption; to provide an effective date; and 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 office of management and budget, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$21,596,832	\$306,984	\$21,903,816
Operating expenses	14,051,438	1,755,988	15,807,426
Emergency commission contingency fund	600,000	(100,000)	500,000
Capital assets	973,477	3,863,648	4,837,125
Grants	54,000	0	54,000
Guardianship grants	1,328,600	621,400	1,950,000
Prairie public broadcasting	1,200,000	0	1,200,000
Community service supervision grants	350,000	0	350,000

Litigation funding pool	0	3,500,000	3,500,000
State student internship program	<u>0</u>	<u>250,000</u>	<u>250,000</u>
Total all funds	\$40,154,347	\$10,198,020	\$50,352,367
Less estimated income	<u>9,434,087</u>	<u>7,702,428</u>	<u>17,136,515</u>
Total general fund	\$30,720,260	\$2,495,592	\$33,215,852
Full-time equivalent positions	117.00	(5.00)	112.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Surplus property building	\$800,000	\$0
Theodore Roosevelt center grant	500,000	0
Cybersecurity remediation pool	1,000,000	0
Extraordinary repairs	0	1,900,000
Capitol south entrance project	0	2,000,000
Special assessments on capitol grounds	0	320,000
Litigation funding pool	0	3,500,000
Assessments of state lands and facilities	0	500,000
Risk management technology project	0	170,000
State student internship program	0	250,000
Electronic procurement study	0	50,000
Total all funds	\$2,300,000	\$8,690,000
Total special funds	<u>1,800,000</u>	<u>8,390,000</u>
Total general fund	\$500,000	\$300,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The office of management and budget shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. FULL-TIME EQUIVALENT POSITION AUTHORIZATION - ATTORNEY GENERAL.** The attorney general is authorized one assistant attorney general full-time equivalent position to assist in litigation relating to voter identification, for the biennium beginning July 1, 2019, and ending June 30, 2021. The attorney general shall request funding transfers from the litigation funding pool line item in section 1 of this Act for salaries and wages costs of the position.

**SECTION 4. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND.** The office of management and budget shall transfer the sum of \$764,400,000 from the strategic investment and improvements fund to the general fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 5. TRANSFER - TAX RELIEF FUND TO GENERAL FUND.** The office of management and budget shall transfer the sum of \$8,600,000 from the tax relief fund to the general fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 6. TRANSFER - TAX RELIEF FUND TO HUMAN SERVICE FINANCE FUND.** The office of management and budget shall transfer the sum of \$173,700,000 from the tax relief fund to the human service finance fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 7. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PRELIMINARY PLANNING REVOLVING FUND.** The office of management and budget shall transfer the sum of \$100,000 from the strategic investment and improvements fund to the preliminary planning revolving fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 8. TRANSFER - STATE STUDENT INTERNSHIP PROGRAM TO STATE AGENCIES.** The office of management and budget shall transfer funds from the state student internship program line item appropriated in section 1 of this Act to eligible state agencies for student internships during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 9. TRANSFER - LITIGATION POOL TO STATE AGENCIES.** The office of management and budget shall transfer funds from the litigation funding pool line item appropriated in section 1 of this Act to eligible state agencies for litigation expenses during the biennium beginning July 1, 2019, and ending June 30, 2021. The office of management and budget may not use funding from the litigation pool to pay judgments under section 32-12-04.

**SECTION 10. GRANTS AND SPECIAL ITEMS.** Section 1 of this Act includes appropriation authority which may only be used for the following grants and special items:

Boys and girls club work	\$53,000
Unemployment insurance	\$2,000,000
Capitol grounds planning commission	\$25,000
Statewide memberships and related expenses	\$625,064

**SECTION 11. ESTIMATED INCOME - ONE-TIME FUNDING - CAPITOL BUILDING FUND.** The estimated income line item in section 1 of this Act includes \$4,220,000 of one-time funding from the capitol building fund. Of the \$4,220,000, \$2,000,000 in the capital assets line item is for a capitol building south entrance project, \$1,900,000 in the capital assets line item is for extraordinary repairs, and \$320,000 in the operating expenses line item is for special assessments associated with the capitol grounds. The funding for the capitol building south entrance project may be used to enclose the existing tunnel for a new public entrance with integrated security systems, to improve accessibility, and to address related exterior landscaping and elevation changes.

**SECTION 12. ESTIMATED INCOME - ONE-TIME FUNDING - RISK MANAGEMENT FUND.** The capital assets line item and the estimated income line item in section 1 of this Act includes \$170,000 of one-time funding from the risk management fund for an information technology project.

**SECTION 13. ESTIMATED INCOME - ONE-TIME FUNDING - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in section 1 of this Act includes \$4,000,000 of one-time funding from the strategic investment and improvements fund. Of the \$4,000,000, \$500,000 in the operating expenses line item is for an assessment of state lands and facilities, and \$3,500,000 in the litigation funding pool line item is for a litigation funding pool.

**SECTION 14. PRAIRIE PUBLIC BROADCASTING GRANT - MATCHING FUNDS.** The prairie public broadcasting line item and the general fund appropriation in section 1 of this Act includes \$200,000 for a grant of up to \$200,000 to prairie public broadcasting for essential equipment needs. The \$200,000 may be awarded only to the extent prairie public broadcasting provides one dollar of matching funds

from nonstate sources for each dollar provided by the office of management and budget.

**SECTION 15. EXEMPTION - FISCAL MANAGEMENT.** The amount appropriated for the fiscal management division, as contained in section 1 of chapter 14 of the 2017 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 statewide systems, including accounting, management, and payroll, during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 16. STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES.**

1. The 2019-21 biennium compensation adjustments for permanent state employees are to average 2 percent with a minimum of \$120 per month and a maximum of \$200 per month per eligible employee for the first year of the biennium and are to average 2.5 percent for the second year. The increases for the first year of the biennium are to be given beginning with the month of July 2019, to be paid in August 2019, and for the second year of the biennium are to be given beginning with the month of July 2020, to be paid in August 2020. Except for minimum and maximum amounts, increases for eligible state employees are to be based on documented performance and are not to be the same percentage increase for each employee.
2. Agencies may use salaries and wages funding available due to vacant positions and employee turnover to provide additional salary increases for selected employees to address salary compression issues or to enhance merit-based increases for employees essential to the effective operations of the agency. The biennial cost of any additional salary increases must be within the agency's current salaries and wages funding level. An agency may not request any additional funding for the 2021-23 biennium to continue the additional salary increases.
3. The office of management and budget shall develop guidelines for use by state agencies for providing compensation adjustments for classified state employees. The guidelines must follow the compensation philosophy statement under section 54-44.3-01.2.
4. Probationary employees are not entitled to the increases. However, at the discretion of the appointing authority, probationary employees may be given all or a portion of the increases effective in July, paid in August, or upon completion of probation. Employees whose overall documented performance level does not meet standards are not eligible for any salary increase.

**SECTION 17. AMENDMENT.** Section 6-09-49 of the North Dakota Century Code is amended and reenacted as follows:

**6-09-49. Infrastructure revolving loan fund - Continuing appropriation.**

1. The infrastructure revolving loan fund is a special fund in the state treasury from which the Bank of North Dakota shall provide loans to political subdivisions, the Garrison Diversion Conservancy District, and the Lake Agassiz water authority for essential infrastructure projects. The Bank shall administer the infrastructure revolving loan fund. The maximum term of a loan made under this section is thirty years. A loan made from the fund under this section must have an interest rate that does not exceed two percent per year.

2. For purposes of this section, "essential infrastructure projects" means capital construction projects for the following:
  - a. The Red River valley water supply project;
  - b. New or replacement of existing water treatment plants;
  - b-c. New or replacement of existing wastewater treatment plants;
  - e-d. New or replacement of existing sewer lines and water lines; and
  - d-e. New or replacement of existing storm water and transportation infrastructure, including curb and gutter construction.
3. In processing political subdivision loan applications under this section, the Bank shall calculate the maximum loan amount for which a qualified applicant may qualify, not to exceed fifteen million dollars per loan. The Bank shall consider the applicant's ability to repay the loan when processing the application and shall issue loans only to applicants that provide reasonable assurance of sufficient future income to repay the loan.
4. The Bank shall deposit in the infrastructure revolving loan fund all payments of interest and principal paid under loans made from the infrastructure revolving loan fund. The Bank may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs which may not exceed one-half of one percent of the amount of the interest payment. All moneys transferred to the fund, interest upon moneys in the fund, and payments to the fund of principal and interest are appropriated to the Bank on a continuing basis for administrative costs and for loan disbursement according to this section.
5. The Bank may adopt policies and establish guidelines to administer this loan program in accordance with the provisions of this section and to supplement and leverage the funds in the infrastructure revolving loan fund. Additionally, the Bank may adopt policies allowing participation by local financial institutions.

<sup>10</sup> **SECTION 18. AMENDMENT.** Section 15.1-18-10 of the North Dakota Century Code as amended in section 18 of Senate Bill No. 2013, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**SECTION 18. AMENDMENT.** Section 15.1-18-10 of the North Dakota Century Code as amended in section 5 of Senate Bill No. 2265, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**15.1-18-10. Specialty areas - Teacher qualification.**

Notwithstanding the requirements of this chapter:

1. An individual may teach art, business education, computer education, a foreign language, music, physical education, special education, and

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<sup>10</sup> Section 15.1-18-10 was also amended by section 1 of House Bill No. 1531, chapter 163, section 18 of Senate Bill No. 2013, chapter 38, and section 5 of Senate Bill No. 2265, chapter 149.

technology education at any grade level from kindergarten through grade eight, provided the individual:

- a. Is licensed to teach by the education standards and practices board;
  - b. Is approved to teach in that area by the education standards and practices board; and
  - c. Meets all requirements set forth in rule by the superintendent of public instruction.
2. An individual may teach Native American languages provided the individual is an eminence-credentialed teacher.
3. An individual may teach in the areas of trade, industry, technical occupations, or health occupations, provided the individual has been issued a license to teach in such areas by the education standards and practices board.
4. An individual may teach in any subject, except elementary education, special education, mathematics, science, language arts, and social studies, if the individual:
- a. Has a permit issued by the board and has a high school diploma; and
  - b. (1) Possesses at least four thousand hours over five years of relevant work experience in the subject area to be taught; or  
(2) Possesses a certificate, permit, or degree in the subject area to be taught; and
  - c. Enrolls in the North Dakota teacher support system approved mentor program, expensed to the sending district.

**SECTION 19.** A new section to chapter 21-10 of the North Dakota Century Code is created and enacted as follows:

**Recognition of legacy fund earnings for budget purposes.**

For purposes of the development of the state budget, the legislative assembly shall recognize legacy fund earnings transferred to the general fund at the end of each biennium in accordance with section 26 of article X of the Constitution of North Dakota as part of the general fund beginning balance for the subsequent biennium rather than as revenue of the biennium in which the transfer is made at the end of the biennium.

**SECTION 20. AMENDMENT.** Section 48-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**48-10-02. Capitol building fund to be administered by the capitol grounds planning commission - Continuing appropriation - Procedure for expenditure of certain funds.**

The capitol grounds planning commission shall have general powers to superintend the administration of the capitol building fund, its interest and income fund, and its investments and properties. It may cause any lands now held in such

funds to be sold at market value, direct the conversion of any securities now held by such funds to cash, approve expenditures from such funds subject to law and legislative appropriations, and to do all other things necessary to carry out the intent and purposes of this section. The board of university and school lands or its designee, on the commission's behalf, shall see to the investment and management of the capitol building fund and its interest and income fund and shall account to the commission concerning these funds at the commission's request.

Provided further, all moneys and other property in the capitol building fund, except as otherwise appropriated, are hereby dedicated and reserved to the exclusive purpose of the construction of an addition to the legislative wing of the state capitol building, and the capitol grounds planning commission shall take necessary steps to accumulate and conserve the money and property in the capitol building fund for such purpose.

The commission may, during any biennium, expend from the interest and income fund of the capitol building fund a sum not to exceed fifty percent of the unencumbered balance on the first day of any biennium, and such amount is hereby appropriated to the capitol grounds planning commission. The expenditure may be made, after consideration of the capitol grounds master plan, for projects or planning but may not exceed ~~one hundred seventy five thousand~~ two hundred fifty thousand dollars per biennium. The expenditure may only be made upon approval by two-thirds of the total membership of the commission. The expenditure must be made upon a voucher, or vouchers, prepared by the office of management and budget at the direction of the commission.

**SECTION 21. AMENDMENT.** Section 48-10-03 of the North Dakota Century Code is amended and reenacted as follows:

**48-10-03. Powers and duties of the commission - Authority to accept gifts - Continuing appropriation.**

The capitol grounds planning commission shall confer with the state council on the arts with respect to the artistic value of monuments, memorials, or works of art to be constructed on the capitol grounds and with qualified consultants retained by it to select sites for buildings, facilities, monuments, memorials, or works of art to be constructed on the capitol grounds. The commission shall develop and modify long-term plans for the development of the capitol grounds. The commission shall approve or disapprove the basic style and exterior construction of any building, facility, monument, memorial, or work of art constructed on the capitol grounds. Except as otherwise provided by this section, the commission has exclusive authority to accept or reject gifts of any type or class of property for exterior placement on the capitol grounds or for the improvement of the exterior construction of any building or facility on the capitol grounds, including landscaping and improvements to the capitol grounds. Any gifts of money accepted pursuant to this section must be deposited in the capitol building fund and are appropriated on a continuing basis to the commission for purposes consistent with this section. No construction or placement of an item on the capitol grounds may be undertaken without the approval of the commission, unless the construction or placement is authorized by the legislative assembly. If the legislative assembly by law or resolution authorizes the construction or placement of an item on the capitol grounds, the commission shall approve the site, basic style, and exterior construction of the item within a reasonable period of time.

The commission shall advise the director of the office of management and budget and the legislative council on matters relating to the physical and aesthetic features of



the interior of all buildings on the capitol grounds. The commission must be called in and shall meet whenever major interior changes, including new construction, remodeling, or renovation of any kind, are proposed or considered for the buildings or facilities on the capitol grounds. The commission must be consulted before the purchase or installation of furniture or fixtures in public areas of the capitol and other buildings on the capitol grounds. The commission shall perform any other duties as may be prescribed by law.

**SECTION 22. AMENDMENT.** Subsection 2 of section 54-06-24 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Before July 1, 2019, a~~ state employee may submit a recommendation or proposal to reduce expenditures within the employee's agency to a suggestion incentive committee. The suggestion incentive committee shall administer the employee suggestion incentive program created under this section and review all recommendations or proposals for reduction of expenditures. The suggestion incentive committee may consider whether the recommendation or proposal to reduce expenditures within the employee's agency applies to any other state agency. The suggestion incentive committee shall notify the office of management and budget of any recommendation that affects an agency other than the employing agency. The governor shall appoint five state agency heads to the suggestion incentive committee for four-year staggered terms to commence on August first in the year of appointment and to continue until the successors are appointed.

**SECTION 23. AMENDMENT.** Section 54-06-30 of the North Dakota Century Code is amended and reenacted as follows:

**54-06-30. State employee performance bonus program - Criteria - Limitations.**

State agencies may provide monetary performance bonuses to their 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 employee in the agency. Development of the written policy must include input from employees.
2. State employees are eligible to receive a bonus under this section only if:
  - a. The employee has held a 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.
3. An employee may not receive more than one performance bonus per fiscal year and may not receive more than one thousand five hundred dollars in bonuses per fiscal year.
  4. ~~Except as provided in this subsection, agencies may pay bonuses under this section during a fiscal year to not more than the number of employees equal to twenty five percent of the employees employed by the agency on July first at the beginning of each state fiscal year. Upon a showing of special circumstances, North Dakota human resource management services may approve pay bonuses above the twenty five percent limitation in this subsection. North Dakota human resource management services shall report any exceptions granted under this subsection to the budget section of the legislative management. 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.

<sup>11</sup> **SECTION 24. AMENDMENT.** Section 54-09-05 of the North Dakota Century Code as amended in section 5 of Senate Bill No. 2002, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**54-09-05. Salary of secretary of state.**

The annual salary of the secretary of state is one hundred seven thousand eight hundred eighty-five dollars through June 30, ~~2019~~2020, and one hundred ten thousand five hundred eighty-two dollars thereafter.

**SECTION 25. AMENDMENT.** Section 23 of House Bill No. 1003, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**SECTION 23. TRANSFER AUTHORITY - LEGISLATIVE MANAGEMENT REPORT.** Notwithstanding section 54-16-04, the state board of higher education may transfer appropriation authority from the operations to the capital assets and capital building fund line items within subdivisions 2 through 14 of section 1 of this Act for the period beginning with the effective date of this Act, and ending June 30, 2021. During the biennium beginning July 1, 2019, and ending June 30, 2021, the state board of higher education may transfer appropriation authority from the capital assets to the operations line item within subdivisions 2 through 14 of section 1 of this Act after an institution has matched and used seventy-five percent of the funding in the capital assets line item appropriated from the general fund for institution extraordinary repairs pursuant to section 25 of this Act. The board shall report any transfer of funds under this section to the office of management and budget and the legislative management.

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<sup>11</sup> Section 54-09-05 was also amended by section 5 of Senate Bill No. 2002, chapter 27.

**SECTION 26. AMENDMENT.** Section 23 of House Bill No. 1014, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**SECTION 23. AMENDMENT.** Section 7 of House Bill No. 1435, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**SECTION 7. TRANSFER - BANK OF NORTH DAKOTA PROFITS - STATEWIDE INTEROPERABLE RADIO NETWORK FUND.**

After other moneys in the statewide interoperable radio network fund, the transfer of \$20,000,000 from the strategic investment and improvements fund, and the \$80,000,000 line of credit have been used, the industrial commission shall transfer the sum of \$20,000,000 from the current earnings and accumulated undivided profits of the Bank of North Dakota to the statewide interoperable radio network fund, during the period beginning with the effective date of this Act, and ending June 30, 2021. Before the industrial commission transfers any current earnings and accumulated undivided profits from the Bank of North Dakota to the statewide interoperable radio network fund, \$25,000,000 of the line of credit must be used.

**SECTION 27. AMENDMENT.** Section 1 of House Bill No. 1018, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**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 the department of commerce, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:~~

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$12,995,788	\$221,498	\$13,217,286
Operating expenses	15,477,622	2,620,581	18,098,203
Grants	48,910,416	8,928,111	57,838,527
Discretionary funds	2,200,000	(50,000)	2,150,000
Agricultural products utilization — commission	3,152,915	(3,152,915)	0
North Dakota trade office	2,000,000	(400,000)	1,600,000
Partner programs	1,939,845	(377,314)	1,562,531
Entrepreneurship grants and vouchers	1,950,000	998,467	2,948,467
Intermodal container shipping fees			
Total all funds	\$88,626,586	\$10,088,428	\$98,715,014
Less estimated income			
Total general fund	\$30,342,680	\$9,949,041	\$40,291,721
Full-time equivalent positions	66.40	(4.60)	61.80

**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 the department of commerce, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$12,995,788	\$221,498	\$13,217,286
Operating expenses	15,477,622	2,620,581	18,098,203
Grants	48,910,416	8,628,111	57,538,527
Discretionary funds	2,200,000	(50,000)	2,150,000
Agricultural products utilization commission	3,152,915	(3,152,915)	0
North Dakota trade office	2,000,000	(400,000)	1,600,000
Partner programs	1,939,845	(377,314)	1,562,531
Entrepreneurship grants and vouchers	1,950,000	998,467	2,948,467
Intermodal container shipping fees	0	1,300,000	1,300,000
Total all funds	\$88,626,586	\$9,788,428	\$98,415,014
Less estimated income	58,283,906	139,387	58,423,293
Total general fund	\$30,342,680	\$9,649,041	\$39,991,721
Full-time equivalent positions	66.40	(4.60)	61.80

**SECTION 28. AMENDMENT.** Section 2 of House Bill No. 1018, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**~~SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.~~** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Flood impact grants/loans	\$5,201,752	\$0
Unmanned aircraft system	2,000,000	2,225,000
Base retention grants	600,000	0
Enhanced use lease grant	3,000,000	3,000,000
Workforce grants to tribally controlled community colleges	500,000	500,000
Census 2020 program	0	1,000,000
Workforce safety grant	0	1,000,000
Entrepreneurship grants and vouchers	0	2,000,000
Sculpture maintenance grants	0	75,000
Nonresident nurse employment recruitment	0	800,000
Intermodal container transportation shipping fees	0	1,300,000
Job development and economic growth grant	0	25,000
Total all funds	\$11,301,752	\$11,925,000
Less estimated income	10,301,752	4,300,000
Total general fund	\$1,000,000	\$7,625,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of commerce shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
<u>Flood impact grants/loans</u>	<u>\$5,201,752</u>	<u>\$0</u>
<u>Unmanned aircraft system</u>	<u>2,000,000</u>	<u>2,225,000</u>
<u>Base retention grants</u>	<u>600,000</u>	<u>0</u>
<u>Enhanced use lease grant</u>	<u>3,000,000</u>	<u>3,000,000</u>
<u>Workforce grants to tribally controlled community colleges</u>	<u>500,000</u>	<u>500,000</u>
<u>Census 2020 program</u>	<u>0</u>	<u>1,000,000</u>
<u>Workforce safety grant</u>	<u>0</u>	<u>1,000,000</u>
<u>Entrepreneurship grants and vouchers</u>	<u>0</u>	<u>2,000,000</u>
<u>Sculpture maintenance grants</u>	<u>0</u>	<u>75,000</u>
<u>Nonresident nurse employment recruitment</u>	<u>0</u>	<u>500,000</u>
<u>Intermodal container transportation shipping fees</u>	<u>0</u>	<u>1,300,000</u>
<u>Job development and economic growth grant</u>	<u>0</u>	<u>25,000</u>
<u>Total all funds</u>	<u>\$11,301,752</u>	<u>\$11,625,000</u>
<u>Less estimated income</u>	<u>10,301,752</u>	<u>4,300,000</u>
<u>Total general fund</u>	<u>\$1,000,000</u>	<u>\$7,325,000</u>

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of commerce shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 29. AMENDMENT.** Section 17 of House Bill No. 1018, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**SECTION 17. NONRESIDENT NURSE EMPLOYMENT RECRUITMENT PROGRAM - ONE-TIME FUNDING.** The grants line item in section 1 of this Act includes ~~\$800,000~~\$500,000 from the general fund for the purpose of establishing a nonresident nurse employment recruitment program. The department of commerce shall provide up to \$4,000 in incentives for each nonresident licensed nurse who signs a written agreement to work at least four years in a North Dakota licensed health care facility. Any licensed health care facility receiving funds from this program must provide two dollars of incentive matching funds for each one dollar provided by the department. This funding is considered a one-time funding item.

**SECTION 30. AMENDMENT.** Section 18 of Senate Bill No. 2012, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

**SECTION 18. PLACEMENT OF INDIVIDUALS IN INSTITUTIONS FOR MENTAL DISEASE - REPORT TO LEGISLATIVE MANAGEMENT.** During the biennium beginning July 1, 2019, and ending June 30, 2021, the department of human services shall develop a statewide plan to address acute psychiatric and residential care needs. The statewide plan must address the following:

1. The size and use of the state hospital;
2. The potential need for state-operated or private acute facilities in areas of the state outside the city of Jamestown;
3. The potential to expand private providers' offering of acute psychiatric care and residential care to fulfill the identified need, including how the implementation of services authorized by the sixty-sixth legislative

assembly affects the balance of inpatient, residential, and community-based services;

4. The impact of department efforts to adjust crisis services and other behavioral health services provided by the regional human service centers; and
5. The potential use of available Medicaid authorities, including waivers or plan amendments.

Prior to ~~October~~ July 1, 2020, the department shall report to the legislative management on the statewide plan, along with any legislation required to implement the plan.

**SECTION 31. REPEAL.** Section 54-06-24 of the North Dakota Century Code is repealed.

**SECTION 32. LEGACY FUND EARNINGS - LEGISLATIVE MANAGEMENT COMMITTEE.**

1. During the 2019-20 interim, the legacy fund earnings committee is created and is composed of the following members:
  - a. The majority and minority leaders of the house of representatives and the senate, or their designees;
  - b. The chairmen of the finance and taxation standing committees of the house of representatives and the senate, or their designees;
  - c. The chairmen of the appropriations committees of the house of representatives and the senate, or their designees;
  - d. Two members of the legacy and budget stabilization fund advisory board, appointed by their respective majority leaders; and
  - e. The chairman of the legislative management, or the chairman's designee.
2. The legislative management shall designate the chairman of the committee.
3. The committee shall study the potential uses of legacy fund earnings, including the use of earnings to provide tax relief, provide for reinvestment of legacy fund earnings, fund research and technological advancements, promote economic growth and diversification, and promote workforce development and career and technical education.
4. The committee may consider public input on the use of legacy fund earnings and review the operation of other funds, such as Norway's sovereign wealth fund.
5. The legislative management shall report its findings and recommendations, together with any legislation required to implement those recommendations, to the legislative management.

**SECTION 33. LEGISLATIVE MANAGEMENT STUDY - OLMSTEAD COMMISSION.** During the 2019-20 interim, the legislative management shall consider studying issues related to the Olmstead commission. The study must include

consideration of the implementation of the new Olmstead commission structure and any emerging Olmstead issues related to services for elderly individuals and individuals with behavioral health issues, physical disabilities, or intellectual disabilities. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 34. LEGISLATIVE MANAGEMENT STUDY - CHARITABLE GAMING LAWS.** During the 2019-20 interim, the legislative management shall consider studying the state's charitable gaming laws. The study must include:

1. An evaluation of whether charitable gaming is being expanded properly; whether the addition of new games, such as sports betting and historic horse racing, is appropriate; and whether such expansion should be approved by the voters;
2. An evaluation regarding the appropriate limitations, restrictions, and oversight if new games are added;
3. An evaluation of whether a portion of gaming proceeds should be deposited in the gambling disorder prevention and treatment fund; and
4. A review of whether the laws regarding taxation, eligible uses for proceeds, gambling sites and locations, limitations, enforcement, conduct and play of charitable gaming are fair, adequate, and appropriate.

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

**SECTION 35. LEGISLATIVE MANAGEMENT STUDY - OTHER USES OF VETERANS' HOME FACILITIES.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of developing other allowable revenue generating uses of the veterans' home facilities and grounds in addition to the purposes identified in section 37-15-02. The study must include an analysis of potential revenue generating activities for the veterans' home facilities and grounds, including a review of the effect on any federal requirements. The legislative management shall reports its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 36. EFFECTIVE DATE.** Section 31 of this Act becomes effective July 1, 2021.

**SECTION 37. EMERGENCY.** Senate Bill Nos. 2020 and 2297, as approved by the sixty-sixth legislative assembly, are declared to be an emergency measure.

Approved May 2, 2019

Filed May 2, 2019

**CHAPTER 41****SENATE BILL NO. 2016**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the office of the adjutant general; to provide an appropriation to the state treasurer; to amend and reenact sections 37-07.1-03 and 37-07.2-01 and subsection 6 of section 57-51.1-07.5 of the North Dakota Century Code, relating to the national guard tuition waiver, national guard tuition grants, and the state share of oil and gas taxes deposited in the state disaster relief fund; to provide for a transfer; to provide for a report; to provide a statement of legislative intent; to provide an exemption; 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 office of the adjutant general for the purpose of defraying the expenses of the office of the adjutant general, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

## Subdivision 1.

## NATIONAL GUARD

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,666,525	\$167,241	\$6,833,766
Operating expenses	3,525,934	(758,613)	2,767,321
Capital assets	224,046	0	224,046
Grants	318,553	(107,637)	210,916
Civil air patrol	299,580	5,554	305,134
Tuition, recruiting, and retention	2,617,500	2,164,572	4,782,072
Air guard contract	8,098,582	472,547	8,571,129
Army guard contract	57,717,944	(10,777,931)	46,940,013
Veterans' cemetery	881,284	95,622	976,906
Reintegration program	1,261,384	(210,216)	1,051,168
Camp Grafton expansion	0	600,000	600,000
Total all funds	\$81,611,332	(\$8,348,861)	\$73,262,471
Less estimated income	<u>65,174,778</u>	<u>(10,360,121)</u>	<u>54,814,657</u>
Total general fund	\$16,436,554	\$2,011,260	\$18,447,814

## Subdivision 2.

## DEPARTMENT OF EMERGENCY SERVICES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,551,119	(\$1,564,688)	\$10,986,431
Operating expenses	6,988,451	2,370,376	9,358,827



Capital assets	0	660,000	660,000
Grants	16,889,159	(615,734)	16,273,425
Disaster costs	51,445,841	(14,890,756)	36,555,085
Radio communications	0	785,000	785,000
Total all funds	\$87,874,570	(\$13,255,802)	\$74,618,768
Less estimated income	<u>78,424,702</u>	<u>(12,754,317)</u>	<u>65,670,385</u>
Total general fund	\$9,449,868	(\$501,485)	\$8,948,383

Subdivision 3.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$25,886,422	\$1,509,775	\$27,396,197
Grand total special funds	<u>143,599,480</u>	<u>(23,114,438)</u>	<u>120,485,042</u>
Grand total all funds	\$169,485,902	(\$21,604,663)	\$147,881,239
Full-time equivalent positions	234.00	(12.00)	222.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
National guard readiness center	\$33,000,000	\$0
Emergency response equipment	569,000	660,000
Camp Grafton expansion	0	600,000
Uninterruptible power supply battery replacement	0	20,000
Computer-aided dispatch equipment	0	516,000
Message switch system upgrade	0	335,000
Dispatching service fee shortfall	0	1,212,253
Dakota access pipeline law enforcement	21,000,000	0
Mobile repeaters and programming radios	<u>300,000</u>	0
Total all funds	\$54,869,000	\$3,343,253
Total other funds	<u>54,869,000</u>	<u>3,162,253</u>
Total general fund	\$0	\$181,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The adjutant general shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. VETERANS' CEMETERY MAINTENANCE FUND - APPROPRIATION.** In addition to the amount appropriated to the adjutant general in the veterans' cemetery line item in subdivision 1 of section 1 of this Act, there is appropriated any additional funds that are received and deposited in the veterans' cemetery maintenance fund pursuant to sections 37-03-14 and 39-04-10.10 for the operation of the North Dakota veterans' cemetery for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. APPROPRIATION - 2017-19 BIENNIUM - STATE DISASTER RELIEF FUND - STATE TREASURER - DISTRIBUTIONS TO NON-OIL-PRODUCING COUNTIES.** Due to extraordinary snowfall in 2019 in the eastern part of the state and due to the excessive cost of road maintenance in the western part of the state, there is appropriated out of any moneys in the state disaster

relief fund in the state treasury, not otherwise appropriated, the sum of \$8,100,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing distributions to non-oil-producing counties for the benefit of the organized and unorganized townships within each non-oil-producing county, for the period beginning with the effective date of this Act, and ending June 30, 2019. In June 2019, the state treasurer shall distribute \$8,100,000, or so much of the sum as may be necessary, to non-oil-producing counties for the benefit of the organized and unorganized townships within each non-oil-producing county. The distribution to each non-oil-producing county must provide for an allocation of \$5,000 to each organized and unorganized township within the county. The amount allocated to organized townships under this section must be paid by the county treasurer to each organized township. The amount allocated to unorganized townships under this section must be credited by the county treasurer to a special fund for unorganized township roads. The distributions under this section must be used for the maintenance and improvement of township paved and unpaved roads and bridges. A township is not eligible for an allocation of funds under this section if the township does not maintain any township roads. For the purposes of this section, a "non-oil-producing county" means a county that has received no allocation of funding or a total allocation of funding under subsection 2 of section 57-51-15 of less than \$5,000,000 for the period beginning September 1, 2017, and ending August 31, 2018.

**SECTION 5. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in subdivision 1 of section 1 of this Act includes \$600,000 of one-time funding from the strategic investment and improvements fund for the camp Grafton expansion. The estimated income line item in subdivision 2 of section 1 of this Act includes \$1,902,253 of one-time funding from the strategic investment and improvements fund for computer-aided dispatch equipment, message switch system upgrades, and 911 dispatching service operations due to a revenue shortfall.

**SECTION 6. CAMP GRAFTON EXPANSION - LEGISLATIVE INTENT.** It is the intent of the sixty-sixth legislative assembly that:

1. The adjutant general purchase options during the period beginning with the effective date of this Act and ending June 30, 2021, for the purchase or long-term lease of land for the camp Grafton expansion, including the purchase of no more than one thousand six hundred acres and the long-term lease of the remainder, not to exceed six thousand acres in total.
2. If the adjutant general secures options to purchase or lease all necessary land for the camp Grafton expansion, the sixty-seventh legislative assembly provide funding and authority for the purchase or long-term lease of land for the camp Grafton expansion during the biennium beginning July 1, 2021, and ending June 30, 2023.
3. The adjutant general not use eminent domain for the expansion of camp Grafton.

**SECTION 7. AMENDMENT.** Section 37-07.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**37-07.1-03. Tuition waiver - Terms.**

A qualifying member of the national guard who enrolls in any state-controlled school, subject to rules adopted by the adjutant general, is entitled to receive a ~~twenty-five~~<sup>thirty-five</sup> percent waiver of the tuition from the state-controlled school,

conditioned on the adjutant general having sufficient appropriations for tuition reimbursement under section 37-07.1-06.2. The tuition waiver is valid only so long as the member of the national guard maintains satisfactory performance with the guard, meets the qualification requirements of rules adopted by the adjutant general, and pursues a course of study in a manner that satisfies the normal requirements of the school.

**SECTION 8. AMENDMENT.** Section 37-07.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-07.2-01. National guard ~~tuition~~member grants and tuition waivers - Terms of grants.**

Any

1. Subject to legislative appropriation and rules adopted by the adjutant general, a qualifying member of the national guard who enrolls in an accredited postsecondary institution in North Dakota which is not controlled by the state may, subject to the limitations of available appropriated funds and subject to national guard rules adopted by the adjutant general, receive a grant in an amount not to exceed the cost of tuition and fees for similar courses and credit hours for each a qualifying member of the national guard who is enrolled at in the North Dakota university system schoolinstitution with the highest tuition and fee rate.
2. Any accredited postsecondary institution that agrees to participate in such a is not controlled by the state and which participates in the national guard member grant program mustshall waive twenty-five percent of the tuition forthat otherwise would be charged to each enrolled, qualifying member of the national guardsmenguard. These grants must be distributed according to rules promulgated by the adjutant general and are available only so
3. The adjutant general shall adopt rules for distributing grants under this section and establishing qualification requirements for grant recipients.
4. A member of the national guard may receive a grant under this section only as long as the member maintains satisfactory performance with the national guard, meets the qualification requirements of the rules adopted under this section, and pursues a course of study which satisfiessatisfying the normal requirements of the schoolpostsecondary institution in which the member is enrolled.
5. For purposes of calculating the grant amount under subsection 1, the "cost of tuition and fees for similar courses and credit hours for a qualifying member of the national guard who is enrolled in the North Dakota university system institution with the highest tuition and fee rate" may not be reduced by more than twenty-five percent pursuant to section 37-07.1-03.

<sup>12</sup> **SECTION 9. AMENDMENT.** Subsection 6 of section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>12</sup> Section 57-51.1-07.5 was also amended by section 5 of House Bill No. 1066, chapter 504.

6. The next ~~twenty~~twentyfive million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than ~~twenty~~twentyfive million dollars; and

**SECTION 10. MAINTENANCE AND REPAIRS - TRANSFERS.** The director of the office of management and budget may transfer up to \$500,000 of appropriation authority to the operating expenses and capital assets line items contained in section 1 of this Act from the various other line items contained in section 1 of this Act, as requested by the adjutant general to provide for the maintenance and repair of state-owned armories in this state during the biennium beginning July 1, 2019, and ending June 30, 2021. The adjutant general shall notify the legislative council of any transfers made pursuant to this section.

**SECTION 11. EXEMPTION.** Any amounts carried over in the radio communications line item for the state radio tower package, in section 7 of chapter 15 of the 2017 Session Laws is not subject to section 54-44.1-11 and any unexpended funds are available for completing these projects or for technology upgrade costs required to implement the statewide interoperable radio network during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 12. EXEMPTION.** The amount appropriated in the tuition, recruiting, and retention line item in subdivision 1 of section 1 of chapter 15 of the 2017 Session Laws is not subject to section 54-44.1-11, and any unexpended funds from this appropriation may be used to provide tuition assistance, recruiting, and retention incentives to eligible members of the North Dakota national guard during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 13. EXEMPTION.** Any amounts carried over pursuant to section 11 of chapter 15 of the 2017 Session Laws which are unexpended as of June 30, 2019, are not subject to section 54-44.1-11 and are available for payment of adjusted compensation to veterans. Any unexpended funds from this appropriation must be transferred to the veterans' cemetery trust fund during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 14. EXEMPTION.** The amount of \$300,000 from the strategic investment and improvements fund appropriated in the operating expenses line item in subdivision 2 of section 1 of chapter 15 of the 2017 Session Laws for mobile repeaters and programming radios is not subject to section 54-44.1-11 and any unexpended funds from this appropriation may be used to complete this project during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 15. EFFECTIVE DATE.** Section 9 of this Act is effective for taxable events occurring after June 30, 2019.

**SECTION 16. EMERGENCY.** Sections 4, 5, and 6 and the camp Grafton expansion and tuition, recruiting, and retention line items in subdivision 1 of section 1 of this Act are declared to be an emergency measure.

Approved April 22, 2019

Filed April 23, 2019

**CHAPTER 42**

**SENATE BILL NO. 2017**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the game and fish department; and to amend and reenact section 20.1-02-16.1 of the North Dakota Century Code, relating to the game and fish 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 game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the game and fish department for the purpose of defraying the expenses of the game and fish department, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$29,854,874	\$1,642,862	\$31,497,736
Operating expenses	15,338,130	611,039	15,949,169
Capital assets	6,080,956	(163,065)	5,917,891
Grants - Game and fish	9,650,184	(1,103,019)	8,547,165
Land habitat and deer depredation	17,824,177	(164,168)	17,660,009
Noxious weed control	725,000	0	725,000
Missouri River enforcement	283,857	4,211	288,068
Grants, gifts, and donations	802,201	(268,469)	533,732
Nongame wildlife conservation	120,000	(20,000)	100,000
Lonetree reservoir	1,798,119	36,743	1,834,862
Wildlife services	500,000	0	500,000
Shooting sports grant program	<u>250,000</u>	<u>0</u>	<u>250,000</u>
Total special funds	\$83,227,498	\$576,134	\$83,803,632
Full-time equivalent positions	163.00	0.00	163.00

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Airplane purchase	\$250,000	\$0
Pipeline protest law enforcement support	423,724	0
Electronic payment processing system	<u>75,000</u>	<u>0</u>
Total special funds	\$748,724	\$0

**SECTION 3. GRANTS, GIFTS, AND DONATIONS LINE ITEM.** The grants, gifts, and donations line item in section 1 of this Act includes up to \$400,000 received by the game and fish department for surface damage, easements, or reclamation on department owned or managed properties as a result of mineral exploration and extraction activities.

<sup>13</sup> **SECTION 4. AMENDMENT.** Section 20.1-02-16.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-16.1. Game and fish fund - Use - Required balance - Budget section approval.**

All income of the state game and fish department deposited by the director with the state treasurer must be credited to the state game and fish fund and the fund may be used only by the department. All money derived from the investment of the fund, special accounts, or portions of the fund must be credited to the game and fish department private land habitat and access improvement fund. The department shall spend moneys in the game and fish fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below fifteen million dollars, unless otherwise authorized by the budget section. Investment of up to fifteen million dollars of the balance of the game and fish fund may be made under the supervision of the state investment board and the moneys must be invested by the investing authority according to the laws relating to state investments. The department shall notify the state investment board of the amount available for investment.

Approved April 26, 2019

Filed April 26, 2019

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<sup>13</sup> Section 20.1-02-16.1 was also amended by section 4 of Senate Bill No. 2055, chapter 438, and section 2 of Senate Bill No. 2293, chapter 198.

## CHAPTER 43

### SENATE BILL NO. 2018

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state historical society; and to provide for a report to the legislative assembly.

#### 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, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$13,595,892	\$699,924	\$14,295,816
Operating expenses	3,885,894	55,691	3,941,585
Capital assets	1,747,653	637,889	2,385,542
Grants	600,000	0	600,000
Exhibits	0	372,000	372,000
Cultural heritage grants	<u>0</u>	<u>500,000</u>	<u>500,000</u>
Total all funds	\$19,829,439	\$2,265,504	\$22,094,943
Less estimated income	3,155,795	123,457	3,279,252
Total general fund	\$16,673,644	\$2,142,047	\$18,815,691
Full-time equivalent positions	75.00	0.00	75.00

**SECTION 2. ONE-TIME FUNDING - REPORT.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Double Ditch historic site repairs	\$1,000,000	\$0
Historic site and extraordinary repairs	0	1,000,000
Exhibit and collections care	0	372,000
Auditorium chairs	0	160,000
Total all funds	\$1,000,000	\$1,532,000
Less estimated income	<u>1,000,000</u>	<u>85,000</u>
Total general fund	\$0	\$1,447,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The state historical society shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. REVOLVING FUND - APPROPRIATION.** All fees collected by the state historical society and deposited in the revolving fund established pursuant to section 55-03-04 are appropriated to the state historical society for the purposes

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provided in chapter 55-03, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. GIFTS, GRANTS, AND BEQUESTS - APPROPRIATION.** All gifts, grants, devises, bequests, donations, and assignments received by the state historical society and deposited with the state treasurer pursuant to section 55-01-04 are appropriated to the state historical society for the purposes provided in section 55-01-04, for the biennium beginning July 1, 2019, and ending June 30, 2021.

Approved April 24, 2019

Filed April 24, 2019



**CHAPTER 44**

**SENATE BILL NO. 2019**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department; to amend and reenact section 55-08-07.1 of the North Dakota Century Code, relating to the state parks and recreation concession revolving fund; to provide for a report to the legislative assembly; to provide for a transfer; to provide for an exemption; to provide for a contingent loan authorization; to provide a contingent appropriation; to provide for a legislative management study; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the parks and recreation department for the purpose of defraying the expenses of the parks and recreation department, for providing funding to the Lewis and Clark interpretive center, and for providing a grant to the International Peace Garden, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

Subdivision 1.

**PARKS AND RECREATION DEPARTMENT**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administration	\$2,668,728	(\$63,729)	\$2,604,999
Park operations and maintenance	20,570,558	3,355,161	23,925,719
Recreation	7,039,554	2,284,006	9,323,560
Total all funds	\$30,278,840	\$5,575,438	\$35,854,278
Less estimated income	17,389,561	5,968,174	23,357,735
Total general fund	\$12,889,279	(\$392,736)	\$12,496,543
Full-time equivalent positions	62.50	(1.00)	61.50

Subdivision 2.

**INTERNATIONAL PEACE GARDEN**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
International Peace Garden	\$876,329	\$2,000,000	\$2,876,329
Total all funds	\$876,329	\$2,000,000	\$2,876,329
Less estimated income	0	2,000,000	2,000,000
Total general fund	\$876,329	\$0	\$876,329

Subdivision 3.

## LEWIS AND CLARK INTERPRETIVE CENTER

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Lewis and Clark interpretive center	\$1,250,687	\$53,688	\$1,304,375
Total all funds	\$1,250,687	\$53,688	\$1,304,375
Less estimated income	362,019	(27,901)	334,118
Total general fund	\$888,668	\$81,589	\$970,257

Subdivision 4.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$14,654,276	(\$311,147)	\$14,343,129
Grand total special funds	17,751,580	10,940,273	28,691,853
Grand total all funds	\$32,405,856	\$10,629,126	\$43,034,982

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriations in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Double ditch historic site repairs grant	\$500,000	\$0
Recreational opportunities on sovereign lands grant	500,000	0
Pipeline protest law enforcement support	200,000	0
Electronic payment processing system loan proceeds	88,000	0
Extraordinary repairs	0	634,126
Capital projects	0	1,755,000
International Peace Garden capital projects	0	2,000,000
Additional equipment	0	622,000
State park survey	0	150,000
Recreation mapping	0	75,000
Traffic counters	0	75,000
Total all funds	\$1,288,000	\$5,311,126
Less estimated income	1,288,000	5,311,126
Total general fund	\$0	\$0

The 2019-21 biennium one-time funding amounts are not part of the entity's base budget for the 2021-23 biennium. The parks and recreation department shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. GAME AND FISH OPERATING FUND - TRANSFER - BOAT RAMP OPERATION AND MAINTENANCE.** The sum of \$122,000, or so much of the sum as may be necessary, included in the park operations and maintenance line item in subdivision 1 of section 1 of this Act, is from the game and fish operating fund, or federal or other funds available to the game and fish department, and must be transferred to the parks and recreation department for maintenance, operating, and extraordinary repairs expenses relating to boat ramps at state parks for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 4. ESTIMATED INCOME - DEPARTMENT OF TRANSPORTATION GRANT.** The estimated income line item in subdivision 3 of section 1 of this Act, includes \$100,000 of grant funding from the department of transportation for the purpose of defraying expenses for the Lewis and Clark interpretive center.

**SECTION 5. ADDITIONAL INCOME - APPROPRIATION.** In addition to the amounts appropriated in section 1 of this Act, any additional federal funds or other funds that become available are appropriated to the parks and recreation department for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 6. EXEMPTION - INTERNATIONAL PEACE GARDEN - REQUIREMENTS.** Any funds remaining in the International Peace Garden line item for repair of the peace tower at the International Peace Garden, in subdivision 2 of section 30 of chapter 15 of the 2013 Session Laws are not subject to section 54-44.1-11, and any unexpended funds are available for capital projects during the biennium beginning July 1, 2019, and ending June 30, 2021. Funding available for use by the International Peace Garden in this section is subject to the International Peace Garden raising one-to-one matching funds from nonstate of North Dakota sources consistent with the 2013 North Dakota legislative language. The parks and recreation department shall review and accept engineering proposals and specifications before committing additional funds to the project and shall assist with bidding and construction of any work associated with this section.

**SECTION 7. EXEMPTION - PARK ENHANCEMENTS.** Any funds remaining for park enhancements in subdivision 1 of section 1 of chapter 53 of the 2015 Session Laws are not subject to section 54-44.1-11, and any unexpended funds are available for park enhancement projects during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 8. EXEMPTION - SOVEREIGN LANDS.** Any funds remaining for recreation opportunities on sovereign lands in section 1 of chapter 18 of the 2017 Session Laws are not subject to section 54-44.1-11, and any unexpended funds are available for recreation opportunities on sovereign lands during the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 9. REQUIREMENTS - MATCHING FUNDS - GRANTS.** Of the funds continued in section 1 of chapter 18 of the 2017 Session Laws as referenced in section 5 of chapter 18 of the 2017 Session Laws, the parks and recreation department shall provide a grant of up to \$250,000 to a nonprofit organization for the development of a community event space and visitor center in an area previously affected by river flooding. An entity receiving a grant pursuant to this section must provide one dollar of matching funds from nonstate sources for every dollar of grant funding received.

**SECTION 10. REQUIREMENTS - MATCHING FUNDS - INTERNATIONAL PEACE GARDEN CAPITAL PROJECTS.** The International Peace Garden line item in subdivision 2 of section 1 of this Act includes \$2,000,000 for capital projects. Expenditure of these funds is subject to one-to-one matching funds being raised from nonstate sources. The parks and recreation department shall review and accept engineering proposals and specifications before committing funds to projects and shall assist with bidding and construction of any work associated with this section.

**SECTION 11. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in subdivision 1 of section 1 of this Act includes the sum of \$1,755,000, from the strategic investment and improvements fund and the estimated income line item in subdivision 2 of

section 1 of this Act includes \$2,000,000 from the strategic investment and improvements fund, for parks capital projects and International Peace Garden capital projects.

**SECTION 12. CONTINGENT LOAN AUTHORIZATION - CONTINGENT APPROPRIATION - INTERNATIONAL PEACE GARDEN.** The parks and recreation department may borrow from the Bank of North Dakota, \$3,000,000, or so much of the sum as may be necessary, which is appropriated to the parks and recreation department for matching nonstate funds that may become available, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funds authorized in this section may be borrowed and spent only upon certification by the director of the parks and recreation department to the director of the office of management and budget that the province of Manitoba or other entity has made available funds for capital projects at the International Peace Garden, during the biennium beginning July 1, 2019, and ending June 30, 2021. Expenditure of the funds appropriated in this section is subject to one dollar of matching funds from the province of Manitoba or other nonstate sources for each one dollar of state funds. The parks and recreation department shall request from the sixty-seventh legislative assembly an appropriation to repay any outstanding loans authorized in this section. The funding in this section is a one-time funding item.

**SECTION 13. AMENDMENT.** Section 55-08-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**55-08-07.1. State parks and recreation concession revolving fund.**

1. The director shall maintain a state parks and recreation concession revolving fund to be used for the following:
  4. a. Procurement and maintenance of an inventory of food, nonintoxicating beverages, and other merchandise and supplies of a suitable nature for the operation of concession stands, including payment of costs and travel expenses necessarily incurred to obtain or sell such items.
  2. b. Repair, replacement, construction, and maintenance of concession buildings, facilities, and properties contained therein.
2. The parks and recreation department may transfer any unobligated funds from the state parks and recreation concession revolving fund to the state parks operating fund.

**SECTION 14. LEGISLATIVE MANAGEMENT STUDY - LEWIS AND CLARK INTERPRETIVE CENTER OPERATIONS.** During the 2019-20 interim, the legislative management shall study the feasibility and desirability of reducing Lewis and Clark interpretive center fees and consider alternatives to address the sustainability of the parks and recreation department's operations of the Lewis and Clark interpretive center. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 15. LEGISLATIVE MANAGEMENT STUDY - PUBLIC ACCESS AND USE OF REAL PROPERTY OWNED BY THE STATE OF NORTH DAKOTA.** During the 2019-20 interim, the legislative management shall study the public access and use of real property located between the Missouri River and the Missouri River correctional center, owned by the state of North Dakota, under the control of the department of corrections and rehabilitation, and the impact of transferring the

property to the parks and recreation department. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 16. EMERGENCY.** Section 9 of this Act is declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 45

### SENATE BILL NO. 2020

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to amend and reenact subsection 3 of section 61-02-78 and section 61-02-79 of the North Dakota Century Code, relating to the infrastructure revolving loan fund and the authorization of a Bank of North Dakota line of credit; to provide for Red River valley water supply requirements; to provide an exemption; to provide for a report to the legislative management; to provide conditions on appropriations; to provide a statement of legislative intent; and to provide for a pilot project.

#### 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 state water commission for the purpose of defraying the expenses of the state water commission, for the period beginning with the effective date of this Act, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$19,659,298	\$172,688	\$19,831,986
Operating expenses	58,044,691	11,711,062	69,755,753
Capital assets	124,819,442	56,119,316	180,938,758
Project carryover	274,867,897	33,465,921	308,333,818
New projects	169,782,147	(169,782,147)	0
Water supply - grants	0	128,000,000	128,000,000
Rural water supply - grants	0	37,200,000	37,200,000
Fargo area flood control including the Fargo Moorhead diversion	0	66,500,000	66,500,000
Mouse River flood control	0	82,500,000	82,500,000
Flood control projects other than Fargo area flood control including the Fargo Moorhead diversion	0	48,000,000	48,000,000
General water - grants	0	<u>27,093,776</u>	<u>27,093,776</u>
Total special funds	\$647,173,475	\$320,980,616	\$968,154,091
Full-time equivalent positions	93.00	(3.00)	90.00

**SECTION 2. ONE-TIME FUNDING - REPORT TO THE SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Line of credit - Bank of North Dakota	\$75,000,000	\$75,000,000
Payoff of outstanding debt	0	<u>25,900,000</u>
Total special funds	\$75,000,000	\$100,900,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The state water commission shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the period beginning with the effective date of this Act, and ending June 30, 2021.

**SECTION 3. EXEMPTION - GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY.** Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the project carryover, water supply - grants, rural water supply - grants, Fargo area flood control including the Fargo Moorhead diversion, Mouse River flood control, flood control projects other than Fargo area flood control including the Fargo Moorhead diversion, and general water - grants line items in section 1 of this Act. However, this exclusion is only in effect for two years after June 30, 2021. 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 4. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION APPROVAL.** In addition to the amounts appropriated in section 1 of this Act, any additional amounts in the resources trust fund and water development trust fund which become available are appropriated, subject to budget section approval, to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2019, and ending June 30, 2021. Before approving any request, the budget section shall determine:

1. Approving additional appropriations will not negatively affect the sixty-seventh legislative assembly's ability to address water-related needs;
2. The proposed use of the additional income complies with legislative intent; and
3. The proposed use of the additional income will not result in future funding commitments.

**SECTION 5. CONDITION ON FARGO AREA FLOOD CONTROL LINE ITEM.** The \$66,500,000 appropriated to the state water commission for Fargo area flood control including the Fargo Moorhead diversion in section 1 of this Act for the period beginning with the effective date of this Act, and ending June 30, 2021, may be used only for Fargo area flood control projects including the Fargo Moorhead diversion, and the appropriation of those funds is conditioned on having no other funds appropriated in section 1 being expended on Fargo area flood control including the Fargo Moorhead diversion. This condition does not prohibit the use of funds appropriated for project carryover in section 1 of this Act for Fargo area flood control projects, subject to section 7 of this Act.

**SECTION 6. CONDITION ON OTHER SECTION 1 LINE ITEMS.** The \$593,320,273 appropriated to the state water commission for salaries and wages, operating expenses, capital assets, water supply - grants, rural water supply - grants, Mouse River flood control, flood control projects other than Fargo area flood control including the Fargo Moorhead diversion, and general water - grants in section 1 of this Act for the period beginning with the effective date of this Act, and ending June 30, 2021, may be used only for salaries and wages, operating expenses, capital assets, water supply - grants, rural water supply - grants, Mouse River flood control, flood control projects other than Fargo area flood control including the Fargo Moorhead diversion, and general water - grants, respectively, and the appropriation of

those funds is conditioned on the funds not being expended on Fargo area flood control projects including the Fargo Moorhead diversion.

**SECTION 7. CONDITION ON PROJECT CARRYOVER FUNDS.** The \$308,333,818 appropriated to the state water commission for project carryover in section 1 of this Act for the period beginning with the effective date of this Act, and ending June 30, 2021, may be used only for project carryover, and the appropriation of those funds is conditioned on having no more than the amount the state water commission approved for Fargo area flood control including the Fargo Moorhead diversion by April 1, 2019, expended from the project carryover funds on Fargo area flood control including the Fargo Moorhead diversion.

**SECTION 8. CONDITION ON APPROPRIATIONS.** The \$66,500,000 appropriated to the state water commission for Fargo area flood control including the Fargo Moorhead diversion in section 1 of this Act and the amount the state water commission approved for Fargo area flood control including the Fargo Moorhead diversion by April 1, 2019, which amount is included in project carryover funds appropriated in section 1 of this Act, may not be used for any work under plan B for the Fargo Moorhead diversion project; except for constructing or repairing levees and dikes and purchasing land, easements, and options or rights of first refusal to purchase land, necessary for flood control; until:

1. The federal court injunction on plan B is modified to allow construction of plan B to continue;
2. The Congress of the United States appropriates federal funds for construction of plan B;
3. The state engineer approves the mitigation plan for plan B;
4. The office of state engineer issues all necessary permits the state engineer requires for plan B; and
5. The Minnesota state legislature appropriates funds for construction of plan B.

**SECTION 9. LEGISLATIVE INTENT - FARGO FLOOD CONTROL PROJECT FUNDING.** It is the intent of the sixty-sixth legislative assembly that the state provide a portion of the local cost-share of Fargo flood control projects, including constructing a federally authorized Fargo flood control project, and that total Fargo flood control project funding to be provided by the state not exceed \$750,000,000, which includes \$120,000,000 originally designated for Fargo interior flood control. It is the intent of the sixty-sixth legislative assembly that the \$379,500,000 yet to be designated by the state for the Fargo flood control project be made available in installments as follows: \$66,500,000 during the 2019-21, 2021-23, 2023-25, 2025-27, and 2027-29 bienniums, and \$47,000,000 during the 2029-31 biennium.

**SECTION 10. FARGO FLOOD CONTROL PROJECT DOWNSTREAM IMPACT MITIGATION.** The Fargo Moorhead metropolitan flood risk management project operations may not cause a downstream federal emergency management agency accredited flood protection system in North Dakota to lose its accreditation. The metropolitan flood diversion authority shall take reasonable measures to mitigate downstream impacts to accredited flood protection systems, existing as of April 1, 2019, located in North Dakota bordering the Red River resulting from the operations of the Fargo Moorhead diversion. For purposes of this section, negative downstream impacts to accredited flood protection systems are caused when the water surface profile passing through such systems is raised by more than one-tenth of one foot for



the one hundred-year event or when the ability of the accredited flood protection system to protect against a two hundred-year or five hundred-year event is compromised. The metropolitan flood diversion authority shall collaborate with the state engineer and accredited flood protection systems in North Dakota to implement this requirement.

**SECTION 11. LEGISLATIVE INTENT - MOUSE RIVER FLOOD CONTROL PROJECT FUNDING.** Except for funding provided during bienniums prior to the 2017-19 biennium, it is the intent of the sixty-sixth legislative assembly that the state provide no more than \$193,000,000 of state funding for Mouse River flood control projects within the city limits of Minot. It is the intent of the sixty-sixth legislative assembly that the \$193,000,000 be made available during the 2017-19, 2019-21, 2021-23, and 2023-25 bienniums. It is the intent of the sixty-sixth legislative assembly that of the \$193,000,000, the state provide \$57,713,284 during the 2017-19 biennium and that the \$135,286,716 yet to be designated by the state for the Mouse River flood control projects, within the city limits of Minot, be provided during the 2019-21, 2021-23, and 2023-25 bienniums.

**SECTION 12. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO LEGISLATIVE MANAGEMENT - APPLICATION.** It is the intent of the sixty-sixth legislative assembly that the state water commission provide, in the form of a grant, up to \$13,000,000, to the Garrison Diversion Conservancy District for the Red River valley water supply project, to initiate construction of phase one prioritized project features identified in accordance with subsections 2 and 3 of section 14 of this Act, for the period beginning with the effective date of this Act, and ending June 30, 2021. The Garrison Diversion Conservancy District shall report on a regular basis to the legislative management's water topics overview committee during the 2019-20 interim regarding the progress of the Red River valley water supply project. The provisions of section 13 of this Act do not apply to the funding referenced in this section.

**SECTION 13. LEGISLATIVE INTENT - RED RIVER VALLEY WATER SUPPLY PROJECT.** It is the intent of the sixty-sixth legislative assembly that the state water commission provide no more than \$30,000,000 to the Garrison Diversion Conservancy District for the Red River valley water supply project during the 2019-21 biennium and 2021-23 biennium and that the state funding be provided at a seventy-five percent state cost-share.

**SECTION 14. RED RIVER VALLEY WATER SUPPLY PROJECT - REPORT TO LEGISLATIVE MANAGEMENT - BUDGET SECTION APPROVAL.** Any funding received by the Garrison Diversion Conservancy District from the state water commission for the Red River valley water supply project during the 2017-19 biennium and the biennium beginning July 1, 2019, and ending June 30, 2021, is subject to the following requirements:

1. Any funding received for the completion of the planning and permitting process of the Red River valley water supply project must result in the following accomplishments:
  - a. The completed Red River valley water supply plan document, which will be the basis and justification for project construction, must include alternative selection, water supply needs, projected project costs, easement acquisitions, environmental regulation compliance to include issuance of a final national pollutant discharge elimination system permit, and acquisition of all other state and federal permits required for the construction of any

- project features intended to be constructed with funding provided during the 2017-19 biennium and the 2019-21 biennium;
- b. A signed bureau of reclamation water service contract agreeing to a minimum of one hundred sixty-five cubic feet per second over a minimum of forty years or equivalent to ensure an adequate water source for the project's needs;
  - c. Prioritized project features for phase one construction; and
  - d. A recommendation of funding options for all phases of the Red River valley water supply project.
2. The state water commission shall review any associated appeals or litigation before releasing any funds for the project.
  3. Any funding received to initiate construction of phase one prioritized project features identified in subsection 1 may be spent and construction of phase one may begin only after the budget section receives and approves certification from the state water commission and the state engineer that all items listed in subsection 1 have been accomplished.
  4. Quarterly progress reports on the Red River valley water supply project from the Garrison Diversion Conservancy District to the water topics overview committee of the legislative management, during the 2019-21 interim.

**SECTION 15. PILOT PROJECT - IMPLEMENTATION OF A BASINWIDE PLAN - REPORT TO THE LEGISLATIVE MANAGEMENT.** Up to \$1,000,000 of the \$48,000,000 appropriated to the state water commission for flood control projects other than Fargo area flood control including the Fargo Moorhead diversion in section 1 of this Act for the period beginning with the effective date of this Act, and ending June 30, 2021, may be used to provide grants under the pilot project in this section.

1. If all the water resource districts and joint water resource districts in a basin develop a basinwide water plan identifying water conveyance, flood control, and other water projects to be undertaken in the basin, the districts jointly may apply to the state water commission for a grant of up to \$1,000,000 for implementation of the plan. The state water commission may select a basinwide plan submitted under this subsection for funding and enter into one cooperative agreement with the water resource districts and joint water resource districts that submitted the plan.
2. The cooperative agreement must include the amount of funding the state water commission will provide, the applicable cost-share requirements, a prohibition on using funds provided under the agreement for planning or any purpose other than implementation of the basinwide plan, and the obligations of the state water commission and each water resource district and joint water resource district in the basin in implementing the basinwide plan. The agreement also must provide for monitoring and oversight of the basinwide plan's implementation.
3. The state water commission shall report to the legislative management on the results of this pilot project no later than August 1, 2020.

**SECTION 16. AMENDMENT.** Subsection 3 of section 61-02-78 of the North Dakota Century Code is amended and reenacted as follows:

3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made ~~at an interest rate of one and one-half percent~~ at the same interest rate as the revolving loan fund established under chapters 61-28.1 and 61-28.2.

**SECTION 17. AMENDMENT.** Section 61-02-79 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-79. Bank of North Dakota - Line of credit.**

The Bank of North Dakota shall extend a line of credit not to exceed seventy-five million dollars at a rate of one and one-half percent over the three month London interbank offered rate, but may not exceed three percent to the state water commission. The state water commission shall repay the line of credit from funds available in the resources trust fund, water development trust fund, or other funds, as appropriated by the legislative assembly. The state water commission may access the line of credit, as necessary, to provide funding as authorized by the legislative assembly for water supply projects approved before June 30, ~~2019~~2021, and flood control projects that have approval for funding before June 30, ~~2019~~2021.

Approved April 25, 2019

Filed April 25, 2019

**CHAPTER 46****SENATE BILL NO. 2021**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of workforce safety and insurance; and to provide for a report to the legislative assembly.

**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 workforce safety and insurance fund in the state treasury, not otherwise appropriated, to workforce safety and insurance, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Workforce safety and insurance operations	\$63,473,062	\$5,274,780	\$68,747,842
Total special funds	\$63,473,062	\$5,274,780	\$68,747,842
Full-time equivalent positions	260.14	0.00	260.14

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Claims and policy system replacement project	\$8,120,097	\$7,010,000
MyWSI extranet enhancement project	538,500	850,000
Internal reporting system	275,000	0
Electronic payment processing system	<u>75,000</u>	<u>0</u>
Total other funds	\$9,008,597	\$7,860,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. Workforce safety and insurance shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

Approved April 18, 2019

Filed April 19, 2019

**CHAPTER 47**

**SENATE BILL NO. 2022**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the retirement and investment office; to provide for a report to the legislative assembly; and to provide for transfers.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of moneys from special funds derived from income for the purpose of defraying the expenses of the retirement and investment office, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,425,570	\$552,660	\$4,978,230
Operating expenses	862,484	2,676,450	3,538,934
Capital assets	0	6,300,000	6,300,000
Contingencies	<u>52,000</u>	<u>0</u>	<u>52,000</u>
Total special funds	\$5,340,054	\$9,529,110	\$14,869,164
Full-time equivalent positions	19.00	1.00	20.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Pension administration system project	<u>\$0</u>	<u>\$9,000,000</u>
Total other funds	\$0	\$9,000,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The retirement and investment office shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. LINE ITEM TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority from the contingencies line item in section 1 of this Act to any other line item as may be requested by the state investment board. The agency shall notify the legislative council of any transfers made pursuant to this section.

Approved April 26, 2019

Filed April 26, 2019

## CHAPTER 48

### SENATE BILL NO. 2023

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the public employees retirement system; to provide for a report; and to provide for transfers.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys from special funds from income to the public employees retirement system for the purpose of defraying the expenses of the public employees retirement system, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,316,169	\$336,435	\$6,652,604
Operating expenses	2,692,221	(208,629)	2,483,592
Capital assets	0	190,000	190,000
Contingencies	<u>250,000</u>	<u>0</u>	<u>250,000</u>
Total special funds	\$9,258,390	\$317,806	\$9,576,196
Full-time equivalent positions	34.50	0.00	34.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Information technology risk assessment	\$0	\$40,000
Upgrade business system software	<u>0</u>	<u>190,000</u>
Total special funds	\$0	\$230,000

The 2019-21 biennium one-time funding amounts are not part of the entity's base budget for the 2021-23 biennium. The public employees retirement system shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. LINE ITEM TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority from the contingencies line item in section 1 of this Act to any other line item as requested by the public employees retirement system board. The agency shall notify the legislative council of any transfers made pursuant to this section.

**SECTION 4. PUBLIC EMPLOYEES RETIREMENT SYSTEM - HOSPITAL AND MEDICAL BENEFITS COVERAGE - REPORT.** During the 2019-21 biennium, the public employees retirement system board shall solicit and receive bids for the 2021-23 biennium hospital benefits coverage and medical benefits coverage for state

employees under section 54-52.1-04. The request for proposal must include an option for coverage through a self-insurance plan. The board shall report to the majority and minority leaders of the House and Senate and the chairmen of the appropriations committees, or their designees, when bids are received during the biennium beginning July 1, 2019, and ending June 30, 2021. The report must provide comparative information and the board's evaluation of the bids received, including information on the self-insurance option.

Approved May 1, 2019

Filed May 2, 2019

**CHAPTER 49****SENATE BILL NO. 2024**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of various state departments and institutions; to provide a statement of legislative intent; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, listed below, to the stated departments and institutions of the state of North Dakota for the purpose of defraying their expenses for the period beginning with the effective date of this Act, and ending June 30, 2019, as follows:

## Subdivision 1.

## OFFICE OF MANAGEMENT AND BUDGET

Lawsuit expenses	<u>\$441,100</u>
Total general fund	\$441,100

## Subdivision 2.

## TAX DEPARTMENT

Homestead tax credit	\$1,170,000
Disabled veterans credit	<u>150,000</u>
Total general fund	\$1,320,000

## Subdivision 3.

## INDUSTRIAL COMMISSION

Litigation costs	<u>\$269,408</u>
Total general fund	\$269,408

## Subdivision 4.

## BANK OF NORTH DAKOTA

Loan interest payments - protest costs	<u>\$1,000,000</u>
Total general fund	\$1,000,000

## Subdivision 5.

## ADJUTANT GENERAL

Loan repayment - disaster costs	\$887,823
Loan repayment - emergency hay operation	<u>1,586,061</u>



Total all funds	\$2,473,884
Less special funds	<u>1,586,061</u>
Total general fund	\$887,823

Subdivision 6.

#### STATE HISTORICAL SOCIETY

Litigation costs	<u>\$265,000</u>
Total general fund	\$265,000

Subdivision 7.

#### ATTORNEY GENERAL

Prosecution witness fees	\$50,000
Capital assets	<u>855,910</u>
Total all funds	\$905,910
Less federal funds	<u>855,910</u>
Total general fund	\$50,000

Subdivision 8.

#### BILL TOTAL

Grand total general fund	\$4,233,331
Grand total special funds	<u>2,441,971</u>
Grand total all funds	\$6,675,302

**SECTION 2. SPECIAL FUNDS - ENVIRONMENT AND RANGELAND PROTECTION FUND.** The less special funds line item in subdivision 5 of section 1 of this Act includes \$1,586,061 from the environment and rangeland protection fund.

**SECTION 3. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS.** It is the intent of the sixty-sixth legislative assembly that the attorney general seek reimbursement from the federal government for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-sixth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly which were obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-sixth legislative assembly that the provisions of section 54-16-13 apply to the loans, except that emergency commission approval does not apply.

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

Approved April 8, 2019

Filed April 9, 2019

**CHAPTER 50****SENATE BILL NO. 2146**

(Senators O. Larsen, Piepkorn)  
(Representatives Meier, Rohr)

AN ACT to provide a contingent appropriation to the state historical society for relocating pioneer village.

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

**SECTION 1. CONTINGENT APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$150,000, or so much of the sum as may be necessary, to the state historical society for the purpose of providing a grant to an entity to relocate the pioneer village from the North Dakota state fairgrounds to another location within Ward County, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funds appropriated in this section may be spent only:

1. Upon certification by the director of the state historical society to the director of the office of management and budget that all pioneer village buildings located on the North Dakota state fairgrounds which are required to be removed to satisfy the court ruling have been removed by June 15, 2019; and
2. If the state fair association provides no less than \$100,000 to the Ward County historical society for matters relating to the pioneer village.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 51

### SENATE BILL NO. 2195

(Senators Marcellais, Dever, G. Lee)  
(Representatives Laning, M. Ruby, Trottier)

AN ACT to provide an appropriation for veterans' spouses and dependents burial fees at the veterans' cemetery; and to provide an effective date.

#### **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 \$175,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of defraying the costs of interring veterans' spouses and dependents who are eligible for internment at the veterans' cemetery, for the period beginning with the effective date of this Act, and ending June 30, 2021.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective March 1, 2020.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 52

### SENATE BILL NO. 2214

(Senators Schaible, Rust)  
(Representative Owens)

AN ACT to provide for a transfer from the foundation aid stabilization fund to the school construction assistance revolving loan fund; and to provide a statement of legislative intent.

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

**SECTION 1. TRANSFER - FOUNDATION AID STABILIZATION FUND TO SCHOOL CONSTRUCTION ASSISTANCE REVOLVING LOAN FUND - USES.** The office of management and budget shall transfer the sum of \$75,000,000 from the foundation aid stabilization fund to the school construction assistance revolving loan fund during the biennium beginning July 1, 2019, and ending June 30, 2021. Of the \$75,000,000 transferred from the foundation aid stabilization fund, \$35,000,000 is from funding available in the fund on June 30, 2019, and \$40,000,000 is from earnings anticipated to be deposited into the fund during the biennium beginning July 1, 2019, and ending June 30, 2021. Pursuant to the continuing appropriation authority under section 15.1-36-08, \$5,000,000, or so much of the sum as may be necessary, is available from the school construction assistance revolving loan fund to the Bank of North Dakota to provide interest rate buydowns associated with loans issued under section 15.1-36-06. In addition, provided sufficient funding is available for loans to local school districts, the Bank of North Dakota may utilize funding from the school construction assistance revolving loan fund to repay a portion of the outstanding principal balance of loans issued under section 15.1-36-06 for the purpose of transferring a portion of the loans issued under that section from the Bank of North Dakota to the school construction assistance revolving loan fund. The remaining amount transferred to the school construction assistance revolving loan fund is available for new school construction loans.

**SECTION 2. LEGISLATIVE INTENT - FOUNDATION AID STABILIZATION FUND.** It is the intent of the sixty-sixth legislative assembly that, for the biennium beginning July 1, 2021, and ending June 30, 2023, the sixty-seventh legislative assembly appropriate \$110,000,000 from the foundation aid stabilization fund to the department of public instruction for providing ongoing funding for state school aid and transfer \$75,000,000 from the foundation aid stabilization fund to the school construction assistance revolving loan fund.

Approved April 30, 2019

Filed May 2, 2019

## CHAPTER 53

### SENATE BILL NO. 2297

(Senators Wardner, Robinson, Sorvaag)  
(Representatives Howe, Roers Jones)

AN ACT to provide an appropriation for capital projects of various state departments and institutions; to authorize the industrial commission to issue and sell evidences of indebtedness for capital projects; to provide an exemption; and to declare an emergency.

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

**SECTION 1. PROJECT AUTHORIZATIONS - APPROPRIATION.** Subject to the provisions of this section, the industrial commission, acting as the North Dakota building authority, shall arrange for the funding of the projects authorized in this section, declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2, beginning with the effective date of this Act and ending June 30, 2021. The industrial commission shall issue evidences of indebtedness under this section with the condition that lease rental payments need not begin until July 1, 2021. The authority of the industrial commission to issue evidences of indebtedness under this section ends June 30, 2021, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and comply with any covenants entered before that date. The proceeds of the evidences of indebtedness and other available funds are appropriated to the agencies listed in this section, beginning with the effective date of this Act and ending June 30, 2021, for the following projects:

North Dakota state university Dunbar Hall	\$40,000,000
Valley City state university Communications and Fine Arts Building project	30,000,000
North Dakota state university agriculture products development center	20,000,000
University of North Dakota Gamble Hall project	6,000,000
Dickinson state university Pulver Hall	<u>4,000,000</u>
Total	<u>\$100,000,000</u>

1. North Dakota state university may obtain and utilize local funds obtained from fundraising or other sources for the Dunbar Hall project. There is appropriated to North Dakota state university the sum of \$3,200,000, or so much of the sum as may be necessary, from any local or other funds that may become available for this project for the period beginning with the effective date of this Act, and ending June 30, 2021.
2. a. North Dakota state university may obtain and utilize local funds obtained from fundraising or other sources for the agriculture products development center project. There is appropriated to North Dakota state university the sum of \$20,000,000, or so much of the sum as may be necessary, from any local or other funds that may become available for this project for the period beginning with the effective date of this Act, and ending June 30, 2021.
- b. The industrial commission may issue evidences of indebtedness for the agriculture products development center project only if North Dakota state

university certifies to the industrial commission and the director of the office of management and budget that \$20,000,000 of local and other funds has been obtained for the project or if North Dakota state university receives approval for a change in project scope from the legislative assembly or budget section pursuant to section 48-01.2-25.

3. a. The university of North Dakota may obtain and utilize local funds obtained from fundraising or other sources for the Gamble Hall project. There is appropriated to the university of North Dakota the sum of \$55,000,000, or so much of the sum as may be necessary, from any local or other funds that may become available for this project for the period beginning with the effective date of this Act, and ending June 30, 2021.
- b. The industrial commission may issue evidences of indebtedness for the Gamble Hall project only if the university of North Dakota certifies to the industrial commission and the director of the office of management and budget that \$55,000,000 of local and other funds has been obtained for the project or if the university of North Dakota receives approval for a change in project scope from the legislative assembly or budget section pursuant to section 48-01.2-25.

## **SECTION 2. APPROPRIATION - CAPITAL PROJECTS - EXEMPTION.**

1. Subject to the provisions of this section, 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 following institutions for the identified capital projects, for the period beginning with the effective date of this Act, and ending June 30, 2019, as follows:

Bismarck state college Nursing Building	\$8,900,000
Dakota college at Bottineau dining hall and other projects	1,000,000
Lake Region state college precision agriculture project	1,000,000
North Dakota state university agriculture products development center project	20,000,000
North Dakota state university Dunbar Hall project	8,000,000
University of North Dakota Gamble Hall project	9,000,000
Valley City state university Communications and Fine Arts Building project	<u>2,000,000</u>
Total general fund	\$49,900,000

In accordance with section 54-44.1-11, any unaccepted funds from these appropriations may be continued into the biennium beginning July 1, 2019, and ending June 30, 2021.

2. The appropriation for the agriculture products development center project must be continued into the biennium beginning July 1, 2019, and ending June 30, 2021, and is available only if North Dakota state university certifies to the industrial commission and the director of the office of management and budget that \$20,000,000 of local and other funds has been obtained for the project or if North Dakota state university receives approval for a change in project scope from the legislative assembly or budget section pursuant to section 48-01.2-25.
3. The appropriation for the Gamble Hall project must be continued into the biennium beginning July 1, 2019, and ending June 30, 2021, and is available only if the university of North Dakota certifies to the industrial commission and

the director of the office of management and budget that \$55,000,000 of local and other funds has been obtained for the project or if the university of North Dakota receives approval for a change in project scope from the legislative assembly or budget section pursuant to section 48-01.2-25.

**SECTION 3. NORTHERN CROPS INSTITUTE BUILDING PROJECT.** The northern crops institute is authorized to begin fundraising efforts for the northern crops institute building project. The northern crops institute shall develop a proposal for its building project, including locations for the new facility, the proper capacity of the facility to serve future institute needs, and the estimated costs of the building project. The northern crops institute may seek funding and authorization from the sixty-seventh legislative assembly to proceed with the building project.

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

Approved May 1, 2019

Filed May 2, 2019

# GENERAL PROVISIONS

## CHAPTER 54

### SENATE BILL NO. 2036

(Legislative Management)  
(Judiciary Committee)

AN ACT to create and enact section 4.1-45-22.1 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; to amend and reenact subsection 7 of section 12.1-31.2-01, section 14-09-00.1, subsection 1 of section 14-09-06.2, subsection 2 of section 27-20-30.1, subsection 1 of section 27-20-45, sections 43-62-01 and 43-62-15, subsection 5 of section 53-06.1-06, section 57-02-08.6, subsection 7 of section 57-38-30.3, and section 57-60-14 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to repeal sections 4.1-55-22.1, 6-09.8-04, 6-09.11-02, and 15-08.1-09 and chapter 61-21.1 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references.

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

**SECTION 1.** Section 4.1-45-22.1 of the North Dakota Century Code is created and enacted as follows:

**4.1-45-22.1. Facility operations and maintenance costs.**

Facility operations and maintenance costs, other than costs resulting from a natural disaster, are to be funded by state fair association funds.

<sup>14</sup> **SECTION 2. AMENDMENT.** Subsection 7 of section 12.1-31.2-01 of the North Dakota Century Code is amended and reenacted as follows:

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 a class A misdemeanor punishable by imprisonment of up to one year, three hundred sixty days or a fine of up to ~~two~~ three 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.

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<sup>14</sup> Section 12.1-31.2-01 was also amended by section 2 of Senate Bill No. 2071, chapter 114.



**SECTION 3. AMENDMENT.** Section 14-09-00.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-00.1. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Decisionmaking responsibility" means the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specified issues, but not child support issues.
2. "Harm" means negative changes in a child's health which occur when an individual responsible for the child's welfare:
  - a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment;  
or
  - b. Commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20.
3. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.
- ~~3-4.~~ "Parenting plan" means a written plan describing each parent's rights and responsibilities.
- ~~4-5.~~ "Parenting schedule" means the schedule of when the child is in the care of each parent.
- ~~5-6.~~ "Parenting time" means the time when the child is to be in the care of a parent.
- ~~6-7.~~ "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.
- ~~7-8.~~ "Residential responsibility" means a parent's responsibility to provide a home for the child.

**SECTION 4. AMENDMENT.** Subsection 1 of section 14-09-06.2 of the North Dakota Century Code is amended and reenacted as follows:

1. For the purpose of parental rights and responsibilities, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
  - a. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance.
  - b. The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
  - c. The child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future.

- d. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each parent's home, and the desirability of maintaining continuity in the child's home and community.
- e. The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.
- f. The moral fitness of the parents, as that fitness impacts the child.
- g. The mental and physical health of the parents, as that health impacts the child.
- h. The home, school, and community records of the child and the potential effect of any change.
- i. If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.
- j. Evidence of domestic violence. In determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded residential responsibility for the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent have residential responsibility. The court shall cite specific findings of fact to show that the residential responsibility best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards residential responsibility to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent residential responsibility. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.
- k. The interaction and inter-relationship, or the potential for interaction and inter-relationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

- l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child ~~as defined in section 50-25-1-02.~~
- m. Any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute.

<sup>15</sup> **SECTION 5. AMENDMENT.** Subsection 2 of section 27-20-30.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A petition to commence an action under this section must contain information ~~as required under section 27-20-21~~ by supreme court rule along with an affidavit either prepared by the administrative county, as determined by the department of human services, or prepared by an agency or tribal council of a recognized Indian reservation in North Dakota.

<sup>16</sup> **SECTION 6. AMENDMENT.** Subsection 1 of section 27-20-45 of the North Dakota Century Code is amended and reenacted as follows:

1. The petition must ~~comply with section 27-20-21~~ contain information as required by supreme court rule and state clearly that an order for termination of parental rights is requested and that the effect will be as stated in section 27-20-46.

**SECTION 7. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-01. Definitions.**

As used in this chapter:

1. "Board" means the North Dakota medical imaging and radiation therapy board.
2. "Certification organization" means a national certification organization that specializes in the certification and registration of medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, sonographer, or magnetic resonance imaging technologist.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the

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<sup>15</sup> Section 27-20-30.1 was also amended by section 29 of Senate Bill No. 2124, chapter 391.

<sup>16</sup> Section 27-20-45 was also amended by section 34 of Senate Bill No. 2124, chapter 391.

diagnosis or visualization of disease or other medical conditions in human beings, including magnetic resonance imaging, fluoroscopy, nuclear medicine, sonography, or x-rays.

6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.
7. "Primary modality" means an individual practicing as a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, sonographer, or magnetic resonance imaging technologist.
8. "Protected health information" has the same meaning as provided under section 23-01.3-01.
9. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.
10. "Radiation therapist" means an individual, other than a licensed practitioner or authorized user, who performs procedures and applies ionizing radiation emitted from x-ray machines, particle accelerators, or sealed radioactive sources to human beings for therapeutic purposes.

**(Contingent effective date - [See note](#)) Definitions.**

As used in this chapter:

1. "Board" means the North Dakota medical imaging and radiation therapy board.
2. "Certification organization" means a national certification organization that specializes in the certification and registration of medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, limited x-ray machine operator, sonographer, or magnetic resonance imaging technologist.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including magnetic resonance imaging, fluoroscopy, nuclear medicine, sonography, or x-rays.
6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in

nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.

7. "Primary modality" means an individual practicing as a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, sonographer, or magnetic resonance imaging technologist.
8. "Protected health information" has the same meaning as provided under section 23-01.3-01.
9. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.
10. "Radiation therapist" means an individual, other than a licensed practitioner or authorized user, who performs procedures and applies ionizing radiation emitted from x-ray machines, particle accelerators, or sealed radioactive sources to human beings for therapeutic purposes.

**SECTION 8. AMENDMENT.** Section 43-62-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-15. Scope of practice.**

1. A license issued by the board under this chapter must specify each medical imaging or radiation therapy modality for which the licensee is qualified to practice under section 43-62-14.
2. The board shall adopt by rule standards concerning scope of practice for medical imaging and radiation therapy modalities, including:
  - a. Nuclear medicine technologist;
  - b. Radiation therapist;
  - c. Radiographer;
  - d. Radiologist assistant;
  - e. Sonographer; and
  - f. Magnetic resonance imaging technologist.
3. A licensee's performance of medical imaging or radiation therapy on humans for diagnostic or therapeutic purposes must be by written, facsimile, electronic, or verbal prescription of an individual authorized by this state to prescribe medical imaging or radiation therapy and must be under the supervision of a licensed practitioner.
4. A licensee's performance of medical imaging and radiation therapy on humans for diagnostic or therapeutic purposes is limited to the scope of the medical imaging and radiation therapy modality of that license as specified under the rules adopted by the board.

**(Contingent effective date - [See note](#)) Scope of practice.**

1. A license issued by the board under this chapter must specify each medical imaging or radiation therapy modality for which the licensee is qualified to practice under section 43-62-14.
2. The board shall adopt by rule standards concerning scope of practice for medical imaging and radiation therapy modalities, including:
  - a. Nuclear medicine technologist;
  - b. Radiation therapist;
  - c. Radiographer;
  - d. Radiologist assistant;
  - e. Sonographer;
  - f. Magnetic resonance imaging technologist; and
  - g. ~~X-ray~~limited x-ray machine operator.
3. A licensee's performance of medical imaging or radiation therapy on humans for diagnostic or therapeutic purposes must be by written, facsimile, electronic, or verbal prescription of an individual authorized by this state to prescribe medical imaging or radiation therapy and must be under the supervision of a licensed practitioner.
4. A licensee's performance of medical imaging and radiation therapy on humans for diagnostic or therapeutic purposes is limited to the scope of the medical imaging and radiation therapy modality of that license as specified under the rules adopted by the board.

**SECTION 9. AMENDMENT.** Subsection 5 of section 53-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

5. A person is restricted from being involved in gaming and the attorney general shall conduct a criminal history record check as follows:
  - a. (1) A person who has pled guilty to or been found guilty of a felony offense as defined by the laws of this state, other states, or the federal government, or has pled guilty to or been found guilty of a violation of this chapter, a gaming rule, chapter 12.1-28 or 53-06.2, or offenses of other states or the federal government equivalent to offenses defined in these chapters, regardless of whether the person has completed or received a deferred imposition of sentence, ~~deferred prosecution~~, or suspended sentence, may not be a licensed distributor, be an investor in or board member or consultant to a licensed distributor, or be employed by a licensed distributor, and may not be employed by a licensed organization to conduct games, for five years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.
  - (2) Paragraph 1 does not apply if the offense to which the person pled guilty or has been found guilty is a misdemeanor and the person has received a deferred imposition of sentence ~~or deferred prosecution~~ and has fully complied with the terms of the deferral.

- b. A person who has pled guilty to or been found guilty of a misdemeanor offense in violation of section 6-08-16.1 or chapter 12.1-06, 12.1-23, or 12.1-24 or offenses of other states, the federal government, or a municipality equivalent to these offenses, regardless if the person has completed or received a suspended sentence, may not be a licensed distributor or be employed by a licensed distributor, and may not be employed by a licensed organization to conduct games, for two years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest, unless the person has received a deferred imposition of sentence ~~or deferred prosecution~~ and has fully complied with the terms of the deferral.
- c. Unless an employee is exempt by the gaming rules or attorney general, the attorney general shall conduct a criminal history record check of each employee of a licensed organization or distributor and charge a fee prescribed by section 12-60-16.9. The fee may be waived by the attorney general if a federal agency or local law enforcement agency has done a record check. The attorney general may require advance payment of any additional fee necessary to pay the cost of a record check of a person for whom adequate background information sources are not readily available. The advance payment must be placed in the attorney general's refund fund. The unused funds must be returned to the person within thirty days of the conclusion of the record check. Unless a federal or local law enforcement agency conducts the record check, the attorney general shall notify the organization or distributor and person of the result. The attorney general shall keep the information confidential except in the proper administration of this chapter or any gaming rule or to provide to an authorized law enforcement agency.

**SECTION 10. AMENDMENT.** Section 57-02-08.6 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-08.6. Authorization for receipt of funds.**

The state treasurer is authorized to receive funds for ~~this~~ the wetlands property tax exemption program by legislative appropriation and by gift, grant, devise, or bequest of any money or property from any private or public source. Funds appropriated from any source for this purpose are not subject to section 54-44.1-11 and all income and moneys derived from the investment of the funds must be credited to the fund for ~~this~~ the wetlands property tax exemption program. The director of the game and fish department, the agriculture commissioner, and the state engineer shall work with the governor, the United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source of funding to implement sections 57-02-08.4 and 57-02-08.5.

**17 SECTION 11. AMENDMENT.** Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the following tax credits:

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<sup>17</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 1 of House Bill No. 1053, chapter 490, section 3 of House Bill No. 1174, chapter 486, section 1 of House Bill No. 1276, chapter 488, section 2 of House Bill No. 1406, chapter 485, section 1 of House Bill No. 1475, chapter 489.

- a. Family care tax credit under section 57-38-01.20.
- b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
- c. Agricultural business investment tax credit under section 57-38.6-03.
- d. Seed capital investment tax credit under section 57-38.5-03.
- e. Planned gift tax credit under section 57-38-01.21.
- f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
- g. Internship employment tax credit under section 57-38-01.24.
- h. Workforce recruitment credit under section 57-38-01.25.
- i. ~~Angel fund investment tax credit under section 57-38-01.26 (effective for the first taxable year beginning after December 31, 2016).~~
- j. Marriage penalty credit under section 57-38-01.28.
- ~~k.~~j. Research and experimental expenditures under section 57-38-30.5.
- ~~l.~~k. Geothermal energy device installation credit under section 57-38-01.8.
- ~~m.~~l. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- ~~n.~~m. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.
- ~~o.~~ Automating manufacturing processes tax credit under section 57-38-01.33 (effective for the first five taxable years beginning after December 31, 2012).
- ~~p.~~n. Income tax credit for passthrough entity contributions to private education institutions under section 57-38-01.7.
- ~~q.~~o. Angel investor tax credit under section 57-38-01.26.

**SECTION 12. 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, fifteen percent to the county and eighty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund. From July 1, 2007, through June 30, 2009, three and one-half percent of all funds allocated to the state general fund pursuant to this chapter must be allocated to the lignite research



~~fund and after June 30, 2009, five~~Five percent of all funds allocated to the state general fund pursuant to this chapter must be allocated to the lignite research fund, for the purposes defined in section 57-61-01.5.

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 January 1, 2002, ~~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~~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 13. REPEAL.** Sections 4.1-55-22.1, 6-09.8-04, 6-09.11-02, and 15-08.1-09 and chapter 61-21.1 of the North Dakota Century Code are repealed.

Approved April 11, 2019

Filed April 12, 2019

**CHAPTER 55****HOUSE BILL NO. 1169**

(Representatives Schauer, K. Koppelman, Satrom, Strinden)  
(Senator Clemens)

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

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

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

**Patriots' Day.**

The third Monday in April of each year is Patriots' Day. To commemorate the start of the American Revolutionary War and the battles of Lexington and Concord, the governor shall issue a proclamation each year designating the third Monday in April as Patriots' Day. This section may not be interpreted to make Patriots' Day a day on which schools and other entities are required to close.

Approved March 19, 2019

Filed March 20, 2019

# AGRICULTURE

## CHAPTER 56

### HOUSE BILL NO. 1383

(Representatives Brandenburg, Boe, Headland, Howe, D. Johnson, Schmidt)  
(Senators Dotzenrod, Erbele, Luick, J. Roers, Rust, Wanzek)

AN ACT to create and enact a new section to chapter 4.1-01 and a new section to chapter 49-22 of the North Dakota Century Code, relating to the creation of an environmental impact mitigation fund and to mitigating direct environmental impacts; to amend and reenact subsection 1 of section 4.1-01-18, sections 49-22-05.1 and 49-22-09, and subsection 4 of section 49-22-16 of the North Dakota Century Code, relating to the federal environmental law impact review committee, exclusion and avoidance areas, the factors considered by the public service commission when evaluating and designating sites, corridors, and routes, and state agency rules; to provide for a report to the legislative management; to provide an appropriation; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 4.1-01-18 of the North Dakota Century Code is amended and reenacted as follows:

1. The federal environmental law impact review committee consists of:
  - a. The commissioner, who shall serve as the chairman;
  - b. The governor or the governor's designee;
  - c. The majority leader of the house of representatives, or the leader's designee;
  - d. The majority leader of the senate, or the leader's designee;
  - e. One member of the legislative assembly from the minority party, selected by the chairman of the legislative management;
  - f. ~~One individual appointed by the lignite energy council;~~
  - g. One individual appointed by the North Dakota corn growers association;
  - ~~h-g.~~ One individual appointed by the North Dakota grain growers association;
  - i. ~~One individual appointed by the North Dakota petroleum council;~~
  - ~~j-h.~~ One individual appointed by the North Dakota soybean growers association; and

- k.i. One individual appointed by the North Dakota stockmen's association;
- j. One individual appointed by the North Dakota farm bureau;
- k. One individual appointed by the North Dakota farmers union;
- l. The chairman of the public service commission or the chairman's designee;
- m. The state engineer or the state engineer's designee;
- n. The director of the game and fish department, or the director's designee;
- o. The director of the department of transportation, or the director's designee;
- p. The director of the department of environmental quality, or the director's designee;
- q. One representative of an investor-owned utility company;
- r. One representative from the North Dakota association of rural electric cooperatives; and
- s. Two individuals from the energy community appointed by the commissioner.

**SECTION 2.** A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

**Environmental impact mitigation fund - Report to legislative management - Continuing appropriation.**

1. The fund is created in the state treasury the environmental impact mitigation fund. The fund consists of all moneys deposited in the fund under section 5 of this Act. All moneys in the fund are appropriated to the commissioner on a continuing basis for distribution by the agriculture commissioner to landowners for the mitigation of agricultural land impacted by development as set forth under subsection 2.
2. Funding may be used only for:
  - a. Contracting for consultation with environmental scientists or engineers for relevant services to implement mitigation required from the impact of development; and
  - b. Reclamation or mitigation of adverse impacts from development.
3. The commissioner is not subject to chapter 54-44.4 when contracting for services under this chapter.
4. The federal environmental law impact review committee shall establish criteria for disbursement of environmental impact funds.
5. The commissioner shall make disbursements based upon the determinations made by the federal environmental law impact review committee.

6. For purposes of this section, the federal environmental law impact review committee shall hold meetings as the chairman determines necessary at a time and place set by the chairman. Upon written request of any four members, the presiding officer shall call a special meeting of the committee.
7. The federal environmental law impact review committee shall make determinations for the disbursement of grants in accordance with subsection 2 and provide those determinations to the commissioner.
8. The federal environmental law impact review committee shall provide a biennial report to the legislative management.
9. For purposes of this section, the environmental impact mitigation fund is not subject to subsection 2 of section 4.1-01-18.

**SECTION 3. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-05.1. Exclusion and avoidance areas - Criteria.**

1. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.
2. The commission may not identify prime farmland, unique farmland, or irrigated land as exclusion or avoidance areas when evaluating and designating geographical areas for site, corridor, or route suitability.
3. Except for electric transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing.
- ~~3-4.~~ Areas less than one and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and less than three times the height of the turbine or more from an inhabited rural residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area, unless a variance is granted. The commission may grant a variance if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in chapter 17-04. A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

**SECTION 4. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.**

1. The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:
  1. a. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
  2. b. The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
  3. c. The potential for beneficial uses of waste energy from a proposed electric energy conversion facility.
  4. d. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
  5. e. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
  6. f. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
  7. g. The direct and indirect economic impacts of the proposed facility.
  8. h. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
  9. i. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
  10. j. The effect of the proposed site or route on areas ~~which are~~ unique because of biological wealth or because ~~they~~the areas are habitats for rare and endangered species.
  11. k. Problems raised by federal agencies, other state agencies, and local entities.
2. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.

**SECTION 5.** A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

**Mitigating direct environmental impacts.**

1. An applicant may elect to provide payment to mitigate any assessed adverse direct environmental impacts of a proposed site, corridor, route, or facility. The applicant may elect to provide the payment to the agriculture commissioner.

2. The agriculture commissioner shall deposit into the environmental impact mitigation fund any moneys paid to mitigate the adverse direct environmental impacts of a proposed site, corridor, route, or facility.

<sup>18</sup> **SECTION 6. AMENDMENT.** Subsection 4 of section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~No~~ ~~A~~ site or route ~~shall~~may not be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at least thirty days before the public hearing on an application for a certificate, a permit, or a waiver, which position ~~shall~~ clearly must state whether the site, corridor, or route being considered for designation will be in compliance with ~~such~~the agency's rules. For purposes of this chapter it ~~shall be~~ presumed that a proposed facility will be in compliance with a state agency's rules if ~~such~~the agency fails to present its position on the proposed site, corridor, or route at least thirty days before the appropriate public hearing.

**SECTION 7. APPROPRIATION.** There is appropriated out of any moneys in the environmental impact mitigation fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of providing grants to political subdivisions for the mitigation of environmental impacts, for the biennium beginning July 1, 2019, and ending June 30, 2021.

Approved April 24, 2019

Filed April 24, 2019

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<sup>18</sup> Section 49-22-16 was also amended by section 3 of Senate Bill No. 2038, chapter 389.

## CHAPTER 57

### SENATE BILL NO. 2224

(Senators Wanzek, Meyer, Sorvaag)  
(Representatives Keiser, Sanford, Schreiber-Beck)

AN ACT to create and enact a new section to chapter 4.1-01 of the North Dakota Century Code, relating to a bioscience innovation grant program; to amend and reenact sections 54-65-01, 54-65-06, and 54-65-07 of the North Dakota Century Code, relating to research North Dakota; to repeal section 10-30.5-14, chapters 15-69 and 54-65, and sections 54-65-02, 54-65-03, 54-65-04, and 54-65-05 of the North Dakota Century Code, relating to the centers of excellence, centers of research excellence, and research North Dakota; to provide a continuing appropriation; to provide an appropriation; to provide for a transfer; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

##### **Bioscience innovation grant program - Continuing appropriation.**

1. The commissioner shall collaborate with a local association having bioscience experience to develop and administer a bioscience innovation grant program through the bioscience innovation grant fund. The commissioner shall collaborate with the department of commerce when awarding bioscience innovation grants to coordinate the management of the commissioner's bioscience innovation grant program and the department of commerce's biotechnology grant program.
2. The commissioner shall collaborate with the committee established under subsection 5 to adopt rules and criteria necessary to administer the bioscience innovation grant program. The rules must include criteria for program eligibility, including requiring a bioscience business that receives funding through the program match up to fifty percent of the amount of the grant received.
3. The bioscience innovation grant fund is a special fund created in the state treasury. Moneys in the fund are appropriated on a continuing basis to the commissioner to award grants to:
  - a. Support biotechnology innovation and commercialization in areas including crop genetics, biofuels, biomaterials, biosensors, and biotechnology in relation to food, nutrition, animals, humans, equipment, medical and health products and services, medical diagnostics, medical therapeutics, and farm-based pharmaceuticals;
  - b. Promote the creation of bioscience jobs in the state to be filled by graduates from institutions under the control of the state board of higher education;



- c. Encourage the development of new bioscience technologies and bioscience startup companies in the state;
  - d. Leverage the agriculture industry in the state to support the development of bioscience technologies impacting livestock operations and crop production;
  - e. Promote bioscience research and development at institutions under the control of the state board of higher education; and
  - f. Encourage coordination and collaboration among other entities and programs in the state to promote bioscience innovation goals.
4. A bioscience business operating in the state is eligible to receive a grant under the program if the business:
- a. Employs at least two employees;
  - b. Has documented annual sales of less than two million five hundred thousand dollars; and
  - c. Is a corporation, partnership, limited liability company, limited partnership, or limited liability partnership registered in the state.
5. The bioscience innovation program shall award grant funding through a committee consisting of:
- a. One representative from the department of agriculture appointed by the agriculture commissioner;
  - b. One representative from the bioscience association of North Dakota appointed by the board of the bioscience association of North Dakota; and
  - c. One representative from the department of commerce appointed by the commissioner of the department of commerce.
6. Grant funds awarded under this section may not be used for capital improvements, academic programming or curriculum, or workforce training.

**SECTION 2. AMENDMENT.** Section 54-65-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-65-01. Definitions.**

In this chapter, unless the context otherwise requires:

- 1. ~~"Center" means a center of research excellence that has been designated under this chapter.~~
- 2. ~~"Commission" means the centers of excellence commission as defined under chapter 15-69.~~
- 3. ~~"Department" means the department of commerce.~~
- 4. ~~"Industry cluster" means one of the following industries:~~

- a. ~~Advanced manufacturing;~~
  - b. ~~Energy;~~
  - c. ~~Information and technology;~~
  - d. ~~Value-added agriculture; or~~
  - e. ~~An industry, including the aerospace industry, specifically identified by the department of commerce as an industry that will contribute to the gross state product.~~
5. ~~"Infrastructure" means new building construction or major building renovation. The term does not include a purchase of equipment or remodel of an existing building.~~
- 6-2. "Research university" means an institution under the control of the state board of higher education which has a full-time student enrollment in excess of nine thousand students.

**SECTION 3. AMENDMENT.** Section 54-65-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-65-06. Research North Dakota grants.**

The department shall establish and administer a research North Dakota grant program to provide grants to a research university for research, development, and commercialization activities related to a private sector partner. ~~The centers of excellence commission, established under chapter 15-69,~~ department shall make grant award determinations under this section. ~~The department shall work with the centers of excellence commission in establishing~~ establish guidelines to qualify for a grant under this section, including the requirement that an application must be accompanied by a partnership agreement between the private sector partner and a research university. The agreement must include details regarding the scope of the work, the budget, the location of the work to be completed, the intellectual property ownership rights, and the intellectual property income distribution. ~~The commission~~ department may approve changes to the scope of the work or the budget only to the extent that the changes are agreed upon by the private sector partner and the research university. ~~Before the commission directs the department to distribute~~ distributes funds awarded under this section, the research university shall provide the ~~commission~~ department with detailed documentation of private sector participation and the availability of one dollar of matching funds for each dollar of state funds to be distributed. Matching funds must be in the form of cash and may not include in-kind assets.

**SECTION 4. AMENDMENT.** Section 54-65-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-65-07. Research North Dakota venture grants.**

The department shall establish and administer a research North Dakota venture grant program to provide grants to a research university for pursuing further commercialization of technology developed by the research university or developed jointly by the research university and a startup or spinoff business operating in North Dakota. ~~The department shall collaborate with the centers of excellence commission in establishing~~ establish guidelines to qualify for a grant under this section.

**SECTION 5. REPEAL.** Section 10-30.5-14 and chapter 54-65 of the North Dakota Century Code are repealed.

**SECTION 6. REPEAL.** Chapter 15-69 and sections 54-65-02, 54-65-03, 54-65-04, and 54-65-05 of the North Dakota Century Code are repealed.

**SECTION 7. TRANSFER - CENTERS OF EXCELLENCE FUND AND CENTERS OF RESEARCH EXCELLENCE FUND TO THE RESEARCH NORTH DAKOTA FUND.** The office of management and budget shall transfer any balance in the centers of excellence fund and the centers of research excellence fund to the research North Dakota fund on July 1, 2019.

**SECTION 8. TRANSFER - RESEARCH NORTH DAKOTA FUND TO BIOSCIENCE INNOVATION GRANT FUND.** The director of the office of management and budget shall transfer the sum of \$700,000, from the research North Dakota fund to the bioscience innovation grant fund during the biennium beginning July 1, 2019, and ending June 30, 2021. Of the funds transferred in this section, up to \$200,000 may be awarded to entities providing assistance to develop bioscience companies.

**SECTION 9. TRANSFER - RESEARCH NORTH DAKOTA FUND TO THE STATE GENERAL FUND.** Notwithstanding the amount appropriated in section 8 of this Act, the office of management and budget shall transfer any balance in the research North Dakota fund to the state general fund on June 30, 2021.

**SECTION 10. EFFECTIVE DATE.** Section 5 of this Act becomes effective July 1, 2021.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 58

### SENATE BILL NO. 2328

(Senators Klein, Elkin, Holmberg, Luick)  
(Representatives D. Johnson, Schreiber-Beck)

AN ACT to create and enact a new chapter to title 4.1 of the North Dakota Century Code, relating to the agricultural products utilization commission; to repeal chapter 54-60.3 of the North Dakota Century Code, relating to the agricultural products utilization commission; and to provide a report.

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

**SECTION 1.** A new chapter to title 4.1 of the North Dakota Century Code is created and enacted as follows:

##### **Agricultural products utilization commission - Composition - Appointment.**

The agricultural products utilization commission shall administer the agricultural products utilization fund. The commission shall consist of nine members, five of whom must be appointed by the agriculture commissioner for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years. Four members appointed by the agriculture commissioner must be actively engaged in farming in this state and one member appointed by the agriculture commissioner must be actively engaged in business in this state. The governor shall appoint one member for a term of two years which expires in odd-numbered years. The member appointed by the governor must be actively engaged in business in this state. Commission members may be reappointed. Terms of commissioners commence on the first day of July. The commissioner of commerce, the president of North Dakota state university, and the agriculture commissioner, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

##### **Agricultural products utilization commission - Authority.**

1. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources.
2. The commission may administer grant programs including:
  - a. A basic and applied research grant program;
  - b. A utilization and marketing grant program;
  - c. A cooperative marketing grant program;
  - d. A nature-based tourism grant program;
  - e. A technical assistance grant program for value-added businesses;
  - f. A farm diversification grant program;

- g. An agricultural prototype development grant program;
  - h. An agricultural technologies grant program; and
  - i. A North American marketing grant program.
3. As a condition of any grant administered by the commission, the commission may require the recipient repay some or all of the grant if the recipient does not fulfill the conditions of the grant. Repayment may be monetary or any other type or method determined by the commission.

#### **Agricultural products utilization commission - Meetings - Personnel - Reports.**

The agricultural products utilization commission, an office of the agriculture commissioner, shall meet as necessary and shall report to each session of the legislative assembly. The commissioner shall provide office space, employ required 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.

#### **Agricultural products utilization commission - Reimbursement - Compensation.**

Members of the agricultural products utilization commission are entitled to be reimbursed for 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. If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive per diem compensation of one hundred thirty-five dollars for each day of attending meetings and performing other duties relating to official business of the commission. 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.

#### **Agricultural products utilization commission - Administrative expenses.**

Administrative expenses of the agricultural products utilization commission, including expenses of members of the commission, employment of required personnel, hiring of consultants, and contracting with public or private entities for services may not exceed ten percent of the funds appropriated to the commission by the legislative assembly each biennium, excluding federal funds.

#### **Agricultural products utilization fund - Purposes.**

The agricultural products utilization fund in the state treasury must be used to fund programs for agricultural research, development, processing, technology, and marketing. The fund must be used to defray the expenses of the North Dakota agricultural products utilization commission. Interest earned on moneys in the fund must be credited to the fund.

**SECTION 2. REPEAL.** Chapter 54-60.3 of the North Dakota Century Code is repealed.

Approved April 9, 2019

Filed April 10, 2019

## CHAPTER 59

### SENATE BILL NO. 2035

(Legislative Management)  
(Judiciary Committee)

AN ACT to amend and reenact subdivision b of subsection 1 of section 4.1-02-04, subdivision b of subsection 1 of section 4.1-04-04, subdivision b of subsection 1 of section 4.1-07-04, subdivision b of subsection 1 of section 4.1-09-05, subdivision b of subsection 1 of section 4.1-09-06, section 4.1-11-04, subsection 2 of section 4.1-13-05, and section 11-11-11 of the North Dakota Century Code, relating to notice and publication requirements.

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

**SECTION 1. AMENDMENT.** Subdivision b of subsection 1 of section 4.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

- b. The ~~county extension agent~~council shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.

**SECTION 2. AMENDMENT.** Subdivision b of subsection 1 of section 4.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

- b. The ~~county extension agent~~council shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.

**SECTION 3. AMENDMENT.** Subdivision b of subsection 1 of section 4.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

- b. The ~~county extension agent~~council shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.

**SECTION 4. AMENDMENT.** Subdivision b of subsection 1 of section 4.1-09-05 of the North Dakota Century Code is amended and reenacted as follows:

- b. The ~~county extension agent~~council shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.

**SECTION 5. AMENDMENT.** Subdivision b of subsection 1 of section 4.1-09-06 of the North Dakota Century Code is amended and reenacted as follows:

- b. The ~~county extension agent~~council shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last

notice must be published no fewer than five nor more than ten days before the meeting.

**SECTION 6. AMENDMENT.** Section 4.1-11-04 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-11-04. Election of county representative.**

1. Before January first, the council shall identify each district represented by a council member whose term is about to expire and notify the extension agent for each county in that member's district that an election to select a county representative must occur before March first.
2. Each year during the month of January, ~~each county extension agent required to conduct an election in accordance with this section~~ the council shall publish notice of the election in the official newspaper of the county for one week. The notice must contain a description of the election process, a request for the nomination of potential candidates for the position, and a deadline for the receipt of all nominations.
3. In order for a nomination to be valid, it must be submitted to the county extension agent in writing and signed by a nominating producer who resides in the county. The county extension agent shall determine if a nomination is valid. A decision by the county extension agent under this subsection is final.
4. The county extension agent shall:
  - a. Compile all valid nominations;
  - b. Contact each nominee to determine if the nominee consents to being on the ballot; and
  - c. Forward the name of each nominee to the council.
5. The council shall prepare the election ballots and mail to each producer of record in the county:
  - a. A ballot;
  - b. A stamped self-addressed return envelope;
  - c. Instructions for completing and returning the ballot; and
  - d. A statement indicating the last date by which the ballots must be postmarked or filed with the county extension agent.
6. ~~The county extension agent~~ council shall publish notice of the pending election in the official newspaper of the county for one week. The notice must announce the election, provide information regarding the manner in which a producer may obtain a ballot if one was not received by mail, and indicate the deadline by which all ballots must be returned.
7. Any producer who resides in the county may vote in the election.
8. Immediately after the passing of the deadline by which the ballots must be returned, the county extension agent shall:

- a. Tabulate the ballots;
  - b. Notify the director of the North Dakota state university extension service and the council that the election has taken place and provide to the director and the council the name and address of the newly elected county representative; and
  - c. Notify the newly elected county representative.
9. Subsections 1 through 8 do not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no soybean producers willing to serve as county representatives reside within the county.

**SECTION 7. AMENDMENT.** Subsection 2 of section 4.1-13-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The ~~county extension agent~~commission shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.

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

**11-11-11. General duties of board of county commissioners.**

The board of county commissioners:

1. Shall superintend the fiscal affairs of the county.
2. Shall supervise the conduct of the respective county officers.
3. May cause to be audited and verified the accounts of all officers having the custody, management, collection, or disbursement of any moneys belonging to the county or received in their official capacity.
4. Before ~~March~~November fifteenth of each year, shall have the county auditor prepare general purpose financial statements in accordance with generally accepted accounting principles. Public notice that financial statements have been prepared and are available for inspection must be published in the official newspaper.

Approved April 22, 2019

Filed April 23, 2019



## CHAPTER 60

### SENATE BILL NO. 2144

(Senators Klein, Myrdal, Wanzek)  
(Representatives Boe, C. Johnson, D. Johnson)

AN ACT to amend and reenact sections 4.1-06-03 and 4.1-06-04 of the North Dakota Century Code, relating to elections of members to the North Dakota dry bean council.

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

**SECTION 1. AMENDMENT.** Section 4.1-06-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-06-03. North Dakota dry bean council - Membership - Term.**

1. The council consists of one participating producer elected from each of the districts established in section 4.1-06-02.
2. Each member of the council must be a United States citizen.
3. Each member of the council must be a resident of and participating producer in the district that the member represents.
4. The term of each elected member is three years and begins on ~~April~~ <sup>May</sup> first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than three consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

**SECTION 2. AMENDMENT.** Section 4.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-06-04. Election of council member.**

1. Each year during the month of February the commissioner shall identify the districts represented by council members whose terms are about to expire.
2. a. The commissioner shall forward to each producer residing in the district a letter inviting the producer to place the producer's own name or the name of another producer into nomination for election to the council.

- b. The commissioner shall include a statement of eligibility to be completed by the producer seeking election and a nomination petition to be signed by ~~ten~~<sup>four</sup> other producers.
3. For a name to be placed on the ballot, the statement of eligibility and the nomination petition must be received by the council on the date specified by the commissioner which may not be later than ~~March~~<sup>April</sup> tenth.
4. The commissioner shall prepare election ballots and mail the ballots to the producers in the district together with a statement indicating:
  - a. The last date by which the ballots must be postmarked or filed with the council;
  - b. The date, time, and location at which the council will open and tabulate the ballots; and
  - c. That any participating producer may be present at the time the ballots are opened and tabulated.
5. The date selected for the opening and tabulation of ballots must be at least five days after the date by which ballots must be postmarked or filed with the council.
6. After the election, the council shall notify the governor that the election has taken place and shall provide to the governor the name and address of the newly elected council member.
7. If, by April tenth or the date specified by the commissioner, the council does not receive any nomination petitions from eligible producers in districts represented by council members whose terms are about to expire, the council may appoint an eligible producer from the district to serve on the council until the seat is filled by a write-in candidate in accordance with subsection 4.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 61

### HOUSE BILL NO. 1349

(Representatives Monson, D. Johnson, Kading)  
(Senators Luick, Oban, Wanzek)

AN ACT to create and enact chapter 4.1-18.1 of the North Dakota Century Code, relating to the regulation of hemp; to amend and reenact subdivision b of subsection 2 of section 12-60-24 and subsection 22 of section 19-24.1-01 of the North Dakota Century Code, relating to criminal history background checks and the definition of marijuana; to repeal chapter 4.1-18 of the North Dakota Century Code, relating to the regulation of industrial hemp; to provide a penalty; to provide a continuing appropriation; and to declare an emergency.

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

**SECTION 1.** Chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

##### **4.1-18.1-01. Hemp (cannabis sativa L.).**

"Hemp" means the plant cannabis sativa L. and any part of the plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

##### **4.1-18.1-02. Hemp - Licensure.**

Any person desiring to grow or process hemp shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. A license must be obtained before a person purchases or obtains hemp material for planting or propagation. The applicant is responsible for anyone working under the applicant's license for all sections of this chapter.

1. The application for a license must include the name and address of the applicant, and the legal description of the land area to be used to produce or process hemp.
2. The commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant.
3. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure.
4. The commissioner shall deny licensure to any person convicted of a felony relating to a controlled substance under state or federal law in the last ten years.

5. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license. A license issued under this chapter expires December thirty-first.
6. An application for a license under this subsection may be submitted to the commissioner anytime before the purchase of hemp seed or viable propagation material.

#### **4.1-18.1-03. License fee.**

The commissioner shall assess each producer and processor a fee not to exceed three hundred fifty dollars. The commissioner shall deposit fees collected under this chapter in the commissioner's operating fund which are appropriated to the commissioner on a continuing basis for the purpose of enforcing this chapter.

#### **4.1-18.1-04. License - Grounds for denial.**

1. The agriculture commissioner may deny or revoke a license to any person who:
  - a. Repeatedly violates this chapter;
  - b. Provides false or misleading information in connection with any application required by this chapter; or
  - c. Has been convicted of a felony, as described in section 4.1-18.1-02, since the most recent criminal history background check.
2. Any person denied a license under this section may request a hearing before the commissioner within thirty days after the date of the denial.

#### **4.1-18.1-05. Violations.**

1. A producer found in violation of this chapter for negligently failing to provide the legal description of the land where the producer is growing hemp, failing to obtain a license, or by producing hemp with a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent on a dry weight basis is subject to:
  - a. Meeting a deadline set by the commissioner to come into compliance with this chapter; and
  - b. Additional reporting requirements set by the commissioner for a period of no less than two years.
2. An applicant or person licensed to grow hemp under this chapter found in violation of the chapter with a culpable mental state greater than negligence must be reported to the attorney general.

#### **4.1-18.1-06. Confiscation and disposal.**

1. Any hemp found to be in violation of this chapter is subject to confiscation and disposal by the commissioner.
2. Any disposal-related costs will be the responsibility of the producer, owner, or person responsible for the hemp.

3. The commissioner is not liable for any destruction of hemp or hemp products carried out under this chapter.

#### **4.1-18.1-07. Commissioner powers.**

The commissioner may enter on any land or areas where hemp is grown, stored, or processed for the purposes of inspections, sample collection, testing, or investigation for the purposes of enforcing this chapter.

#### **4.1-18.1-08. Hemp - Research.**

1. Any researcher associated with or operating under an institution under the control of the state board of higher education is exempt from obtaining a license described under section 4.1-18.1-02 to grow hemp. A researcher shall notify the commissioner of the researcher's intent to plant hemp and provide the following information to the commissioner:
  - a. The name and contact information of the primary investigator; and
  - b. The legal description of all land where hemp will be grown as part of the project.
2. The research institution shall ensure the primary investigator and all other project participants meet the criminal history background restrictions in section 4.1-18.1-02.

<sup>19</sup> **SECTION 2. AMENDMENT.** Subdivision b of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- b. ~~The agriculture commissioner for each applicant for a license to grow or process industrial hemp under section 4.1-18-02 and any individual engaged in an activity authorized under section 4.1-18-034.1-18.1-02.~~

<sup>20</sup> **SECTION 3. AMENDMENT.** Subsection 22 of section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

22. "Marijuana" means all parts of the plant of the genus cannabis; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant. The term marijuana does not include hemp as defined in section 4.1-18.1-01.

**SECTION 4. REPEAL.** Chapter 4.1-18 of the North Dakota Century Code is repealed.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 28, 2019

Filed March 29, 2019

<sup>19</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1074, chapter 102, section 1 of House Bill No. 1084, chapter 100, section 1 of House Bill No. 1102, chapter 404, section 1 of House Bill No. 1219, chapter 239, section 1 of House Bill No. 1376, chapter 101.

<sup>20</sup> Section 19-24.1-01 was also amended by section 1 of House Bill No. 1119, chapter 191, section 2 of House Bill No. 1119, chapter 191, section 1 of House Bill No. 1283, chapter 193, section 1 of House Bill No. 1417, chapter 190, section 2 of House Bill No. 1417, chapter 190, section 3 of House Bill No. 1417, chapter 190, and section 1 of House Bill No. 1519, chapter 192.

## CHAPTER 62

### HOUSE BILL NO. 1081

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsection 1 of section 4.1-19-01 and section 4.1-19-06 of the North Dakota Century Code, relating to the definition and sale of eggs.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 4.1-19-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Eggs" means eggs in the shell which are the product of a domesticated ~~chicken~~poultry.

**SECTION 2. AMENDMENT.** Section 4.1-19-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-19-06. Eggs**~~Egg dealers to be graded~~registered - Exemption.

1. All eggs sold or offered for sale ~~to an ultimate consumer in this state must be candled, graded, and labeled with the correct grade designation other than to an end consumer in this state must be candled, labeled, and meet all other requirements as the commissioner deems necessary. All eggs sold or offered for sale to an end consumer are exempt from this requirement.~~
2. The agriculture commissioner may adopt appropriate rules under chapter 28-32 to provide for registration of egg dealers and standards for candling, grading, and inspecting eggs as to size, quality, purity, strength, holding requirements, transportation, labeling, and sanitation in conformity with United States department of agriculture regulations governing the grading and inspecting of eggs.

Approved March 8, 2019

Filed March 8, 2019

**CHAPTER 63****HOUSE BILL NO. 1026**

(Legislative Management)  
(Agriculture Committee)

AN ACT to amend and reenact section 4.1-20-19 of the North Dakota Century Code, relating to mandatory training for soil conservation district supervisors.

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

**SECTION 1. AMENDMENT.** Section 4.1-20-19 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-20-19. Soil conservation district supervisors - Training.**

As soon as practicable after an individual is elected or appointed to the position of a soil conservation district supervisor, the individual shall attend a training session delivered by the state soil conservation committee. ~~An, and the individual who has attended a training session as an elected or as an appointed soil conservation district supervisor may not be required to~~ shall attend any additional or subsequent session or participate in annual training as determined by the state soil conservation committee.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 64

### SENATE BILL NO. 2064

(Government and Veterans Affairs Committee)  
(At the request of the State Forester)

AN ACT to amend and reenact subsection 1 of section 4.1-21-01 of the North Dakota Century Code, relating to the state forester appointment, qualification, and duties.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 4.1-21-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The state forester must be a graduate of an accredited school of forestry with a minimum education of a bachelor of science degree in forestry. ~~The office of the state forester must be located in Bottineau.~~ The state forester shall serve as the director of the state forest service and, subject to the approval of the board of higher education and the president of North Dakota state university, may employ assistants and secure office facilities and equipment necessary for the administration of this chapter and the performance of the powers and duties of the office.

Approved March 19, 2019

Filed March 20, 2019



## CHAPTER 65

### SENATE BILL NO. 2065

(Government and Veterans Affairs Committee)  
(At the request of the State Forester)

AN ACT to amend and reenact section 4.1-21-04 of the North Dakota Century Code, relating to the state forester reserve account.

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

**SECTION 1. AMENDMENT.** Section 4.1-21-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-21-04. State forester reserve account.**

The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds one million five hundred thousand dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than ~~seven~~one million two hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 66

### SENATE BILL NO. 2079

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsection 19 of section 4.1-25-01 and sections 4.1-25-31, 4.1-25-32, and 4.1-25-33 of the North Dakota Century Code, relating to the definition of pasteurized milk ordinance and to the pasteurized milk ordinance revision.

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

**SECTION 1. AMENDMENT.** Subsection 19 of section 4.1-25-01 of the North Dakota Century Code is amended and reenacted as follows:

19. "Pasteurized milk ordinance" means the ~~2015~~2017 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.

**SECTION 2. AMENDMENT.** Section 4.1-25-31 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-25-31. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.**

The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2015~~2017 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

**SECTION 3. AMENDMENT.** Section 4.1-25-32 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-25-32. 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 Standard Methods and the procedures outlined in the public health service food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~2015~~2017 Edition".

**SECTION 4. AMENDMENT.** Section 4.1-25-33 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-25-33. Grade A pasteurized milk ordinance.**

Dairy producers, processors, and manufacturers shall comply with the pasteurized milk ordinance and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2015~~2017 Revision".

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 67

### HOUSE BILL NO. 1400

(Representatives Schmidt, D. Johnson, Magrum, Meier, Rohr, Satrom)  
(Senators Cook, Schaible)

AN ACT to create and enact section 4.1-31-05.1 and a new section to chapter 19-02.1 of the North Dakota Century Code, relating to misrepresenting nonmeat as a meat food product; to amend and reenact section 4.1-31-01 of the North Dakota Century Code, relating to the definition of meat and the nomenclature of edible meat products; and to provide a penalty.

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

<sup>21</sup> **SECTION 1. AMENDMENT.** Section 4.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-31-01. Definitions.**

1. "Adulterated" means a carcass or meat food product:
  - a. That includes a poisonous or harmful substance that may render it injurious to health;
  - b. That includes a chemical pesticide that is unsafe under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
  - c. That includes a food or color additive that is unsafe under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
  - d. That includes a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
  - e. That has been prepared, packed, or held under unsanitary conditions;
  - f. That includes the product of an animal that has died in a manner other than slaughter or includes the product of an animal condemned by reason of disease that existed at the time of slaughter;
  - g. The container of which includes a poisonous or harmful substance that may make the contents harmful to health;
  - h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
  - i. That is damaged or inferior and that damage or inferiority has been concealed; or

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<sup>21</sup> Section 4.1-31-01 was also amended by section 1 of House Bill No. 1146, chapter 68.

- j. That has had a substance added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better or of greater value than it is.
2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, horses, equines, bison, other large domesticated animals, and poultry.
  3. "Carcass" includes all or any part of an animal carcass.
  4. "Container" means a receptacle of a meat food product.
  5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an animal carcass or meat food products for the owner of the animal carcass or the meat food products, if all meat food products derived from the custom processing are returned to that owner.
  6. "Inspector" means an inspector appointed by the commissioner to perform duties under this chapter.
  7. "Intrastate commerce" means commerce within this state.
  8. "Meat" means the edible flesh of an animal born and harvested for the purpose of human consumption.
  9. "Meat food product" means a product usable as human food which contains any part of an animal carcass from an animal born and harvested for the purpose of human consumption. The term does not include any product that contains any part of an animal carcass in a relatively small proportion or which historically has not been considered by consumers as a product of the meat food industry, and which is not represented as a meat food product.
  - 9-10. "Poultry" includes domesticated fowl bred for the primary purpose of producing eggs or meat, or both, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, but excluding doves and pigeons.
  - 10-11. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

**SECTION 2.** Section 4.1-31-05.1 of the North Dakota Century Code is created and enacted as follows:

**4.1-31-05.1. Misrepresentation of cell-cultured protein as meat food product prohibited.**

1. A person may not advertise, offer for sale, sell, or misrepresent cell-cultured protein as a meat food product. A cell-cultured protein product:
  - a. May not be packaged in the same, or deceptively similar, packaging as a meat food product; and
  - b. Must be labeled as a cell-cultured protein food product.
2. For purposes of this section, "deceptively similar" means packaging that could mislead a reasonable person to believe the product is a meat food product.

**SECTION 3.** A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

**Misrepresentation of cell-cultured protein as meat food product prohibited.**

1. A person may not advertise, offer for sale, sell, or misrepresent cell-cultured protein as a meat food product. A cell-cultured food product:
  - a. May not be packaged in the same, or deceptively similar, packaging as a meat food product; and
  - b. Must be labeled as a cell-cultured food product.
2. For purposes of this section, "deceptively similar" means packaging that could mislead a reasonable person to believe the product is a meat food product.

Approved March 12, 2019

Filed March 13, 2019

**CHAPTER 68****HOUSE BILL NO. 1146**

(Representatives McWilliams, Kading, D. Ruby, Simons, Skroch)  
(Senator O. Larsen)

AN ACT to amend and reenact subsection 2 of section 4.1-31-01 of the North Dakota Century Code, relating to the inclusion of domesticated rabbits in the definition of animal for meat inspection.

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

<sup>22</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 4.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, horses, equines, bison, other large domesticated animals, domesticated rabbits, and poultry.

Approved March 8, 2019

Filed March 8, 2019

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<sup>22</sup> Section 4.1-31-01 was also amended by section 1 of House Bill No. 1400, chapter 67.

**CHAPTER 69****SENATE BILL NO. 2080**

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 4.1-31-01.1 of the North Dakota Century Code, relating to the federal meat inspection revision.

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

**SECTION 1. AMENDMENT.** Section 4.1-31-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-31-01.1. Federal meat inspection regulations.**

All federal meat and poultry inspection regulations effective as of ~~August 1, 2016~~ May 31, 2018, as provided under title 9, Code of Federal Regulations, parts 301-320, 325, 329, 381, 391, 416-418, 424, 430, 441, 442, and 500, but excluding parts 307.5 and 381.38, are incorporated by reference and made a part of this title.

Approved March 6, 2019

Filed March 7, 2019



## CHAPTER 70

### SENATE BILL NO. 2152

(Senators Luick, Erbele, Klein)  
(Representatives D. Johnson, Pollert)

AN ACT to amend and reenact sections 4.1-37-02, 4.1-37-03, and 4.1-37-04 of the North Dakota Century Code, relating to the licensing of anhydrous ammonia storage tanks and mobile storage containers.

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

**SECTION 1. AMENDMENT.** Section 4.1-37-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-37-02. ~~Definition~~Definitions.**

As used in this chapter, "~~anhydrous~~unless the context otherwise requires:

1. "Anhydrous ammonia storage facility" means a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia.
2. "Mobile storage container" means a United States department of transportation class MC-331 cargo tank, or an American society of mechanical engineers code constructed and national board registered mobile storage container, approved by the United States department of transportation, used for the temporary storage of anhydrous ammonia to be downloaded into a nurse tank.

**SECTION 2. AMENDMENT.** Section 4.1-37-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-37-03. License required - Anhydrous ammonia facilities constructed after June 30, 1985 and mobile storage container.**

The owner or operator of an anhydrous ammonia storage facility or a mobile storage container shall apply to the agriculture commissioner and to the board of county commissioners for a license to site and operate the facility or mobile storage container. Neither an anhydrous ammonia storage facility nor mobile storage container may ~~not~~ be operated without a license issued by the agriculture commissioner and the board of county commissioners of the county in which the facility is located. Any permanent anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting requirements of this chapter and may receive a license under this chapter regardless of noncompliance with the siting requirements. The commissioner or the board may deny a license for failure to remit the proper fee for failure to comply with the siting requirements of this chapter and rules adopted under this chapter if constructed after June 30, 1985, or for failure to comply with local siting requirements. The agriculture commissioner also may deny a license if the facility does not meet the initial inspection standards required by this chapter and by any rules adopted under this chapter. To obtain a license, an applicant

shall submit with the application two sets of drawings or photographs showing, and two signed affidavits stating, the facility or mobile downloading site has been measured and meets the siting requirements. The drawings or photographs must show the proposed location of the tank and the surroundings in all directions. A set of drawings or photographs must be provided to the agriculture commissioner and a set must be provided to the board of county commissioners. An applicant for a mobile storage container license also shall submit a certification from the United States department of transportation.

**SECTION 3. AMENDMENT.** Section 4.1-37-04 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-37-04. State license fee.**

The agriculture commissioner shall charge a one-time twenty-five dollar fee for a private anhydrous ammonia storage facility or a mobile storage container license ~~for each anhydrous ammonia storage facility and an additional one hundred dollars for each retail and storage site, and a one-time one hundred dollar fee for a retail anhydrous ammonia storage facility or a mobile storage container license.~~ Expansion of an existing anhydrous ammonia storage facility does not require reapplication for licensing, but all siting requirements must be met. The license is valid indefinitely but may not be transferred. A new license is required when an anhydrous ammonia storage facility changes ownership.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 71

### HOUSE BILL NO. 1134

(Representatives Pollert, Boe, D. Johnson, Trottier)  
(Senators Erbele, Klein, Wanzek)

AN ACT to create and enact two new sections to chapter 4.1-41 of the North Dakota Century Code, relating to commercial feed and prohibited acts; to amend and reenact sections 4.1-41-01, 4.1-41-02, 4.1-41-04, 4.1-41-05, 4.1-41-06, 4.1-41-07, 4.1-41-09, 4.1-41-10, 4.1-41-11, 4.1-41-13, 4.1-41-16, and 4.1-41-18 of the North Dakota Century Code, relating to commercial feed; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 4.1-41-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-41-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Brand name" means any word, name, symbol, or device, used singly or in combination, that identifies commercial feed and distinguishes it from that of all others.
2. "Commercial feed" means any materials, used singly or in combination, which are distributed, or are intended to be distributed, for use as feed or for mixing in feed, except:
  - a. Unmixed whole seeds and unmixed physically altered seeds, provided the seeds are not chemically changed or adulterated;
  - b. Commodities such as hay, straw, stover, silage, cobs, husks, and hulls, provided the commodities are:
    - (1) Not intermixed or mixed with other materials;
    - (2) Not adulterated; and
    - (3) Specifically exempted by the agriculture commissioner;
  - c. Individual chemical compounds or substances, provided the chemical compounds or substances are:
    - (1) Not intermixed or mixed with other materials;
    - (2) Not adulterated; and
    - (3) Specifically exempted by the agriculture commissioner; and
  - d. Unprocessed grain screenings or unprocessed mixed grain screenings, provided:

- (1) The distributor does not make oral or written reference to the nutritional value of the screenings;
  - (2) The screenings are not adulterated; and
  - (3) The screenings are specifically exempted by the ~~agriculture~~ commissioner.
3. "Commissioner" means the agriculture commissioner or the commissioner's designee.
4. "Contract feeder" means an independent contractor that feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to the independent contractor and the independent contractor's remuneration is determined in whole or in part by feed consumption, mortality, profits, or the amount or quality of the product.
- 4-5. "Customer-formula feed" means a commercial feed that is manufactured according to the specific instructions of the final purchaser.
- 5-6. "Distribute" means to:
- a. Offer for sale, sell, exchange, or barter commercial feed or customer-formula feed; or
  - b. Supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder.
- 6-7. "Drug" means any article:
- a. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in an animal other than a human; and
  - b. Other than feed, intended to affect the structure or function of an animal's body.
- 7-8. "Feed ingredient" means each of the constituent materials making up a commercial feed.
- 8-9. "Guarantor" means the person whose name and principal mailing address appear on a feed label and who is responsible for guaranteeing the information contained on the label.
10. "Label" means any ~~written~~, printed, or stamped graphic information on or attached to a commercial feed or customer-formula feed container or its wrapper and, or the written information accompanying the distribution of a commercial feed or customer-formula feed, including the invoice or delivery slip.
- 9-11. "Labeling" means the written information accompanying the distribution of commercial feed or customer-formula feed, including promotional materials distributed to market the feed.
12. "Manufacture" means to grind, mix, blend, or further process a commercial feed for distribution.

13. "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.
- ~~10-14.~~ "Official sample" means any feed taken by the agriculture commissioner in accordance with section 4.1-41-13.
- ~~14-15.~~ "Percent" or "percentage" means a rate determined by weight.
16. "Pet food" means any commercial feed prepared and distributed for consumption by dogs or cats.
- ~~12-17.~~ "Product name" means a term that identifies a commercial feed as to its kind, class, or specific use and which distinguishes that feed from all other products bearing the same brand name.
- ~~13-18.~~ "Quantity statement" means the net weight, mass, volume, or count of the feed.
19. "Specialty pet food" means a commercial feed prepared and distributed for consumption by canaries, finches, gerbils, goldfish, hamsters, mynahs, psittacine birds, snakes, turtles, and any other domesticated animals, not including dogs or cats, normally maintained in a cage or a tank.
20. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

**SECTION 2. AMENDMENT.** Section 4.1-41-02 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-02. Manufacturer's license - Retailer's license.**

1. a. A person shall obtain a commercial feed manufacturer's license for each facility at which the person manufactures commercial feed if the person distributes the feed within this state.
- b. A person shall obtain a commercial feed manufacturer's license if the person's name appears on the label of a commercial feed as a guarantor.
- c. This subsection does not apply to a person that manufactures or guarantees pet food or specialty pet food.
2. A person shall obtain a commercial feed retailer's license for each facility at which the person sells commercial feed other than pet food or specialty pet food. This subsection does not apply to a person licensed as a commercial feed manufacturer.
3. ~~In order to~~To obtain an initial license required by this section, a person shall submit an application form at the time and in the manner required by the ~~agriculture~~ commissioner and:
  - a. If the person is applying for a manufacturer's license, a fee in the amount of one hundred twenty dollars for a manufacturer's license; or
  - b. If the person is applying for a retailer's license, a fee in the amount of sixty dollars.

- ~~4.3.~~ To renew a license required by this section, a person shall submit an application form at the time and in the manner required by the commissioner and:
- a. If the person is applying for a manufacturer's license renewal, a fee in the amount of one hundred dollars; or
  - b. If the person is applying for a retailer's license renewal, a fee in the amount of fifty dollars.
- ~~5.4.~~ A license issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.
5. A license issued under this section is not transferable.
6. If a person fails to renew a license within thirty-one days of its expiration, that person must apply for an initial license.

**SECTION 3. AMENDMENT.** Section 4.1-41-04 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-04. License - Registration - Hearing.**

~~1. a. The agriculture~~ After providing an affected person with an opportunity for an informal hearing, the commissioner may refuse;

1. Refuse to issue a license to an applicant that is not in compliance with this chapter:
  - ~~b. The commissioner may revoke;~~
2. Revoke an existing license if the licensee is not in compliance with this chapter:
  - ~~e. The commissioner may refuse; or~~
3. Refuse to register any feed and ~~may~~ cancel the registration of any feed if the registrant is not in compliance with this chapter.
- ~~2. Before the commissioner may act under this section, the commissioner shall provide the affected person with an opportunity for an informal hearing.~~

**SECTION 4. AMENDMENT.** Section 4.1-41-05 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-05. Pet food - Specialty pet food - Registration - Exemption - Penalty.**

1. Before being distributed in this state, each pet food product and each specialty pet food product must be registered with the ~~agriculture~~ commissioner. This requirement does not apply to a distributor, provided the pet food or specialty pet food is registered by another person.
2. To register pet food and specialty pet food, a person shall submit:

- a. An application form at the time and in the manner required by the agriculture commissioner; and
  - b. A fee in the amount of one hundred twenty dollars per product.
3. To renew a registration required by this section, a person shall submit:
- a. An application form at the time and in the manner required by the commissioner; and
  - b. A fee in the amount of one hundred dollars per product.
4. A registration issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.
5. If a person fails to renew a registration within thirty-one days of its expiration, that person must apply for an initial registration.
6. Upon approving an application for an initial registration or a renewed registration, the commissioner shall furnish a certificate of registration to the applicant. A certificate of registration is not transferable.
7. Any person violating this section is subject to a penalty of twenty-five dollars for each product that must be registered.
8. A person is exempt from this section if the person:
- a. Produces pet food in a noncommercial kitchen;
  - b. Sells the pet food directly to the end consumer at a community event or farmer's market; and
  - c. Does not use meat, poultry, fish, or their byproducts as an ingredient in the product.

**SECTION 5. AMENDMENT.** Section 4.1-41-06 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-06. Commercial feed - Label - Content.**

Except as provided in section 4.1-41-07, any commercial feed that is distributed in this state must be labeled. The label must include:

1. The product's name, including any brand name under which the product is distributed;
2. The product's weight, volume, or quantity, as appropriate;
3. A guaranteed analysis expressed on an "as is" basis as determined by the commissioner to adequately advise the consumer of the composition and contents of the commercial feed or to support claims made in the labeling. The composition and contents of the commercial feed must be determinable by laboratory tests, such as the methods published by the association of official analytical chemists international;

4. Unless waived by the agriculture commissioner in the interest of consumers, the commonly accepted name of each ingredient or, if permitted by the commissioner, a collective term for a group of ingredients that perform a similar function;
5. The name and principal mailing address of the manufacturer or the distributor;
6. Directions for the safe and effective use of anyall commercial feed containing drugs and those determined by the commissioner as being necessary; and
7. Any precautionary statements recommended by the commissioner to ensure the safe and effective use of the feed.

**SECTION 6. AMENDMENT.** Section 4.1-41-07 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-07. Customer-formula feed - Label - Content.**

Any customer-formula feed that is distributed in this state must be labeled.

1. The label must include:
  - a. The name and address of the manufacturer;
  - b. The name and address of the purchaser;
  - c. The date of delivery;
  - d. The product's name;
  - e. The ~~weight, volume, or quantity, as appropriate,~~ statement of each ingredient, including commercial feed; ~~and~~
  - f. Directions for the safe and effective use of all customer-formula feed containing drugs and those determined by the commissioner as being necessary; and
  - g. Any precautionary statement recommended by the ~~agriculture~~ commissioner to ensure the safe and effective use of the feed.
2. If the feed contains drugs, the label must also include:
  - a. The purpose of each drug;
  - b. The weight, volume, or quantity, as appropriate, of each drug; and
  - c. The name of each active ingredient.

**SECTION 7. AMENDMENT.** Section 4.1-41-09 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-09. Inspection fee - Responsibility for payment - Report - Penalty.**

1. The person responsible for payment of the inspection fee is:
  - a. The manufacturer listed on the label;



- b. The guarantor listed on the label; or
  - c. The distributor listed on the label.
2. Before the close of business on each February fifteenth, the person responsible for the payment of the inspection fee shall provide to the agriculture commissioner:
    - a. A ~~sworn statement~~tonnage report indicating the number of net tons [kilograms] of commercial feed, by class, which the person distributed in this state during the immediately preceding calendar year; and
    - b. The inspection fees due in accordance with this chapter.
  3. If the person responsible for the payment of the inspection fee fails to submit the assessments as required by this section, the commissioner may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date. If imposed, a penalty under this section may not be less than ten dollars nor more than two hundred fifty dollars.

**SECTION 8. AMENDMENT.** Section 4.1-41-10 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-10. Inspection fee - Records.**

1. The person responsible for payment of the inspection fee shall maintain, for a period of three years, records of all transactions necessary to verify the statement of tonnage required by section 4.1-41-09.
2. The person shall make the records required by this section available to the agriculture commissioner for examination upon request.
3. If the commissioner determines the records required by this section were not maintained accurately, the commissioner may cancel all licenses on file for the distributor.

**SECTION 9. AMENDMENT.** Section 4.1-41-11 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-11. Adulteration.**

1. A person may not distribute any commercial feed that is adulterated.
4. Commercial feed is adulterated if it ~~contains~~:
  - a. ~~Contains~~ any poisonous or harmful substance that may render the feed injurious to health. However, if the substance naturally occurs in the feed ~~and is not an added substance~~, the commercial feed may be considered adulterated under this ~~subsectionsubdivision~~ only if the substance is present in sufficient quantity to render it injurious to health.
  2. ~~b. Commercial feed is adulterated if it contains~~ Contains any added substance that is poisonous, harmful, or nonnutritive, and unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346]. This ~~subsectionsubdivision~~ does not apply to any pesticide in or on a raw agricultural commodity or to a food additive.

3. ~~c.~~ Commercial feed is adulterated if it contains Contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].
4. ~~d.~~ a. Commercial feed is adulterated if it is is a raw agricultural commodity and it contains a pesticide that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].
- b. (1) However, if a pesticide 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 [21 U.S.C. 346a] and if the raw agricultural commodity has been subjected to a process such as canning, cooking, dehydration, freezing, or milling, any pesticide residue remaining in or on the processed feed may be deemed safe, provided:
- (1) (a) The residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice; and
- (2) (b) The concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity.
- e. (2) The exception set forth in ~~subdivision b paragraph 1~~ does not apply if the consumption of the processed feed may result in the edible product of the animal evidencing a pesticide residue that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].
5. ~~e.~~ Commercial feed is adulterated if it contains Contains any color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 379e].
6. ~~f.~~ Commercial feed is adulterated if it contains Contains any new animal drug that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 360b].
7. ~~2.~~ In addition to the foregoing subsections provisions of subsection 1, commercial feed is adulterated if:
- a. Any valuable constituent has been omitted, in whole or in part, thereby providing a lower nutritive value in the finished product;
- b. The composition or quality of the feed falls below or differs from that which is stated on its label;
- c. The feed contains added hulls, screenings, straw, cobs, or other high fiber material, unless each material is stated on the label;
- d. The feed contains viable weed seeds in amounts exceeding ~~the limits the commissioner establishes by rule~~ four and one-half viable restricted seeds per pound avoirdupois [453.59 grams];

- e. The feed contains a drug and the methods used in or the facilities or controls used for its manufacturing, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner to ensure the drug meets the identity, strength, quality, purity, and safety requirements of this chapter;
- f. The feed consists in whole or in part of any filthy, putrid, or decomposed substance, or if the feed is otherwise unfit for its intended use;
- g. The feed has been prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;
- h. The feed consists in whole or in part of 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 [21 U.S.C. 342];
- i. The feed's container is composed, in whole or in part, of any poisonous or harmful substance that may render the contents injurious to health;
- j. The feed has been packaged in bags or totes that previously contained pesticide products, treated seeds, or other hazardous materials; or
- k. The feed 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 [21 U.S.C. 348].

**SECTION 10. AMENDMENT.** Section 4.1-41-13 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-13. Inspection, sampling, analysis.**

- 1.a. For purposes of enforcing this chapter, designated officers and employees of the agriculture commissioner may enter and inspect, ~~during normal business hours, any factory, warehouse, or establishment in this state, or vehicle in which commercial feeds are manufactured, processed, packed, or held for distribution, or transported,~~ provided the individuals first present their credentials and written notice to the owner ~~or manager, or driver.~~
- b. ~~For purposes of enforcing this chapter, designated officers and employees of the commissioner may enter and inspect any vehicle being used to transport or hold commercial feed, provided the individuals first present their credentials and written notice to the owner, manager, or driver.~~
- 2. Any inspection authorized under this section must take place at reasonable times, within reasonable limits, and in a reasonable manner. The inspection may include the verification of records and production and control procedures, as necessary to determine compliance with this chapter and rules implemented under this chapter.
- 3. A separate notice must be given for each authorized inspection. However, a separate notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with

reasonable promptness. Upon completion of the inspection, the individual in charge of the facility or the individual in charge of the vehicle must be notified.

4. If the officer or employee making an inspection ~~of a factory, warehouse, or other establishment~~ has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give to the owner or manager a receipt describing the samples obtained.
5. If an officer or employee of the commissioner is denied entry as authorized by this section, the commissioner may obtain a warrant directing the owner or manager to submit the premises described in the warrant to inspection.
6. Any officer or employee of the commissioner authorized to enter any structure or vehicle in accordance with this section, may obtain samples and examine records relating to distribution of commercial feeds.
7. Sampling and analysis under this section must be conducted in accordance with generally recognized methods ~~and any analysis of the samples taken must be conducted in accordance with generally recognized laboratory methods, such as methods published by the association of official analytical chemists international.~~
8. The commissioner shall forward the results of any sample analysis to the person named on the label and to the purchaser.
9. If an analysis indicates that a commercial feed has been adulterated or misbranded, within thirty days following receipt of the analysis, the person named on the label may request that the commissioner provide a portion of the sample.
10. In determining for administrative purposes whether a commercial feed is deficient in any component, the commissioner must be guided by the official sample.

**SECTION 11.** A new section to chapter 4.1-41 of the North Dakota Century Code is created and enacted as follows:

**Prohibited acts.**

Committing the following acts and causing the following acts are prohibited:

1. The manufacture or distribution of commercial feed that is adulterated or misbranded;
2. The adulteration or misbranding of commercial feed;
3. The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of section 4.1-41-11;
4. The removal or disposal of commercial feed in violation of an order under section 4.1-41-14;
5. The failure or refusal to register in accordance with section 4.1-41-03 or section 4.1-41-05;

6. The failure or refusal to register in accordance with section 4.1-41-02; and
7. The failure to pay inspection fees or file reports as required by section 4.1-41.

**SECTION 12. AMENDMENT.** Section 4.1-41-16 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-16. Publications.**

1. The agriculture commissioner may publish information regarding commercial feeds, including their production, sales, and use, and publish a comparison of the analyses of official samples of commercial feeds sold in this state with the analyses guaranteed in their registration and on their label.
2. Information regarding the production and use of commercial feeds may not disclose the operations of any person.

**SECTION 13. AMENDMENT.** Section 4.1-41-18 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-41-18. Certificates - Fees.**

The agriculture commissioner may:

1. Implement a program to inspect, audit, and certify commercial feed manufacturing and distribution facilities, at the request of an owner;
2. Issue commercial feed export certificates; and
3. Establish a schedule of fees for the services provided under this section.

**SECTION 14.** A new section to chapter 4.1-41 of the North Dakota Century Code is created and enacted as follows:

**Administration - Rulemaking authority.**

The commissioner shall administer this chapter. The commissioner may adopt rules under chapter 28-32 to implement this chapter.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 72

### HOUSE BILL NO. 1149

(Representatives D. Johnson, Kempenich, Monson, Vigesaa)  
(Senators Dotzenrod, Schaible, Wanzek)

AN ACT to create and enact a new section to chapter 4.1-47 of the North Dakota Century Code, relating to noxious weed certification; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 4.1-47 of the North Dakota Century Code is created and enacted as follows:

##### **Noxious weed certification - Gravel and sand pits.**

1. If requested by any person needing certification, a county weed board may certify, based on standards set by the commissioner after consulting with representatives of county or city weed boards, gravel, scoria, topsoil, or sand surface mining operations are not contaminated with noxious weeds.
2. The commissioner may adopt a schedule of fees that county weed boards may charge for inspecting, testing, analyzing, and certifying gravel, scoria, topsoil, or sand surface mining operations.
3. Certification of gravel, scoria, topsoil, or sand surface mining operations as being free from contamination of noxious weeds is not a warranty of any kind as to the quality of the gravel, scoria, topsoil, or sand from an inspected and certified location.

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

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 73

### HOUSE BILL NO. 1166

(Representatives D. Johnson, C. Johnson, Jones, Kempenich)  
(Senators Dotzenrod, Patten, Schaible)

AN ACT to amend and reenact section 4.1-73-01 of the North Dakota Century Code, relating to freeze branding.

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

**SECTION 1. AMENDMENT.** Section 4.1-73-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-73-01. Definition.**

For purposes of this chapter, "brand" means an identifying imprint ~~that is:~~

1. ~~Placed~~placed on livestock by use of a hot branding iron; ~~or~~
2. ~~Placed on equines by means of either a hot branding iron or a freeze branding technique.~~

Approved March 8, 2019

Filed March 8, 2019

# ALCOHOLIC BEVERAGES

## CHAPTER 74

### SENATE BILL NO. 2246

(Senators J. Lee, D. Larson)  
(Representatives M. Johnson, Longmuir)

AN ACT to amend and reenact section 5-01-05.1 of the North Dakota Century Code, relating to public intoxication.

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

**SECTION 1. AMENDMENT.** Section 5-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **5-01-05.1. Public intoxication - Assistance - Medical care.**

1. As used in this section "intoxicated" means a state in which an individual is under the influence of alcoholic beverages, drugs, or controlled substances, or a combination of alcoholic beverages, drugs, and controlled substances.
2. A peace officer may take any apparently intoxicated individual to the individual's home, to a local hospital, to a detoxification center, or, whenever that individual constitutes a danger to that individual or others, to a jail. A tier 1b mental health professional, as defined under section 25-01-01, of a local hospital may hold that individual for treatment up to seventy-two hours. ~~That~~
3. An intoxicated individual may not be held in jail because of intoxication more than twenty-four hours. An intoxicated individual may not be placed in a jail unless a jailer is constantly monitoring the individual and medical services are provided if the need is indicated.
4. Upon placing that individual in jail, or if the individual is admitted to a hospital or detoxification center, upon admission, the peace officer shall make a reasonable effort to notify the intoxicated individual's family as soon as possible.
5. Any additional costs incurred by the city, county, ambulance service, or medical service provider on account of an intoxicated individual are recoverable from that individual.

Approved March 14, 2019

Filed March 14, 2019



## CHAPTER 75

### SENATE BILL NO. 2114

(Judiciary Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 5-01-08 of the North Dakota Century Code, relating to the penalty for individuals under twenty-one years of age using alcoholic beverages or entering licensed premises; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 5-01-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **5-01-08. Individuals under twenty-one years of age prohibited from using alcoholic beverages or entering licensed premises - Penalty.**

1. Except as permitted in this section and section 5-02-06, an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.
2. An individual under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
  - a. A restaurant if accompanied by a parent or legal guardian;
  - b. In accordance with section 5-02-06;
  - c. If the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
  - d. If the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or
  - e. If the individual enters the premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.
3. A violation of this section is a class B misdemeanor. For a violation of subsection 1 or 2, the court also shall sentence a violator to an evidence-based alcohol and drug education program operated under rules adopted by the department of human services under section 50-06-44.
4. The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of human services for evaluation and appropriate counseling or treatment.

5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
6. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals that may be immune for any one occurrence is five individuals.

Approved April 24, 2019

Filed April 24, 2019

## CHAPTER 76

### SENATE BILL NO. 2343

(Senators Klein, Meyer, Poolman)  
(Representatives Beadle, Howe, Mock)

AN ACT to amend and reenact sections 5-01-14 and 5-01-21 of the North Dakota Century Code, relating to licensing of microbrew pubs and brewer taproom licenses.

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

**SECTION 1. AMENDMENT.** Section 5-01-14 of the North Dakota Century Code is amended and reenacted as follows:

##### **5-01-14. Microbrew pubs - Licensing - Taxes.**

1. A microbrew pub shall obtain a brewer license and a retailer license as required under this title. A microbrew pub may manufacture on the licensed premises, store, transport, sell to wholesale malt beverage licensees, and export no more than ten thousand barrels of malt beverages annually; sell malt beverages manufactured on the licensed premises; and sell alcoholic beverages regardless of source to consumers for consumption on the microbrew pub's licensed premises. A microbrew pub may not engage in any wholesaling activities. ~~All~~Except as provided in subsection 3, all sales and delivery of malt beverages to any other retail licensed premises may be made only through a wholesale malt beverage licensee. Beer manufactured on the licensed premises and sold by a microbrew pub directly to the consumer for consumption on or off the premises is subject to the taxes imposed pursuant to section 5-03-07, in addition to any other taxes imposed on brewers and retailers. A microbrew pub is required to file a monthly sales report with the tax commissioner by the fifteenth day of the month following the month in which the sales are made. The report must be prepared and submitted in a form and manner as prescribed by the tax commissioner. A microbrew pub is not precluded from retailing beer it purchases from a wholesaler. Complimentary samples of beer may not be in an amount exceeding sixteen ounces [.47 liter] per patron. Licenses under this section entitle the microbrew pub to sell beer manufactured on the premises for off-premises consumption, in brewery-sealed containers of ~~not less than one-half gallon [1.89 liters]~~ and not more than three gallons [11.36 liters]. A licensee may not sell to any person for off-premises consumption more than two hundred eighty-eight ounces [8.51 liters] of beer per day, in any size brewery-sealed container of not more than three gallons [11.36 liters]. This section may not be superseded under chapters 11-09.1 and 40-05.1.
2. The tax commissioner may issue a special event permit for not more than twenty days per calendar year to a microbrew licensee which allows the licensee to give free samples of beer manufactured by the licensee, sell beer manufactured by the glass or in closed containers, or dispense beer manufactured by the licensee at a designated trade show, convention, festival, fundraiser, or other related special event hosted by a nonprofit organization

unaffiliated with the licensee, or a similar event approved by the tax commissioner. This subsection is subject to local ordinances.

3. A microbrew pub may transfer beer in bulk, as defined by section 5-01-01, manufactured by the microbrew pub to an affiliated microbrew pub licensee. For purposes of this subsection, "affiliated microbrew pub licensee" means a microbrew pub of which at least an eighty-five percent interest is owned by the microbrew pub measured annually and:
  - a. The microbrew pub does not own more than three affiliated microbrew pub licensees;
  - b. The microbrew pub licensee receiving the beer in bulk has produced no less than five thousand gallons [18927.06 liters] of beer on the premises in the preceding calendar year. For the purpose of calculating the production requirements, the production must be prorated based on the number of days beer was produced;
  - c. The beer in bulk transferred in any calendar year constitutes no more than fifty percent of the beer being produced by the microbrew pub licensee receiving the beer; and
  - d. For purposes of determining whether the ten thousand barrel production limit under subsection 1 is being exceeded, the beer being transferred is credited to the microbrew pub that manufactured the beer.

**SECTION 2. AMENDMENT.** Section 5-01-21 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-21. Brewer taproom license.**

1. The tax commissioner may issue multiple brewer taproom licenses to the owner or operator of a brewery producing no more than twenty-five thousand barrels of malt beverages annually. A brewer with multiple taproom licenses must produce malt beverages at each location and the total amount of malt beverages produced at all locations combined may not exceed twenty-five thousand barrels of malt beverages annually. Each brewer taproom license may be issued and renewed for an annual fee of five hundred dollars, which is in lieu of all other state license fees required by this title. All provisions of this chapter which apply to a retail license must apply to a license issued under this section unless the provision is explicitly inconsistent with this section.
2. A brewer holding a brewer taproom license may:
  - a. Manufacture on the licensed premises, store, transport, sell, and export no more than twenty-five thousand barrels of malt beverages annually.
  - b. Sell malt beverages manufactured on the licensed premises for consumption on the premises of the brewery or a restaurant owned by the licensee and located on property contiguous to the brewery.
  - c. Sell beer manufactured on the licensed premises for off premises consumption in brewery-sealed containers of not less than twelve ounces [.36 liters] and not more than 5.16 gallons [19.53 liters].

- d. Sell and deliver beer produced by the brewery to licensed beer wholesalers.
- e. Dispense free samples of beer offered for sale. Complimentary samples of beer may not be in an amount exceeding sixteen ounces [.47 liter] per patron.
- f. Sell and deliver beer produced by the brewery to licensed retailers within the state, but only if:
  - (1) The brewer uses the brewer's own equipment, trucks, and employees to deliver the beer;
  - (2) Individual deliveries, other than draft beer, are limited to the case equivalent of eight barrels per day to each licensed retailer;
  - (3) The total amount of beer sold or delivered directly to all retailers does not exceed ten thousand barrels per year; and
  - (4) A common carrier is not used to ship or deliver the brewery's product to the public or to licensed retailers. All other sales and deliveries of beer to licensed retailers in this state may be made only through a wholesaler licensed in this state.
3. The tax commissioner may issue special event permits for not more than twenty days per calendar year to a brewer taproom licensee allowing the licensee, subject to local ordinance, to give free samples of its beer ~~and to~~ sell its beer by the glass or in closed containers, or dispense beer manufactured by the licensee at a designated trade show, convention, festival, fundraiser or other related special event hosted by a nonprofit organization unaffiliated with the brewer taproom licensee, or a similar event approved by the tax commissioner.
4. For any month in which a brewery has made sales to a wholesaler licensed in this state, that brewery shall file a report with the tax commissioner no later than the last day of each calendar month reporting sales made during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after that day.
5. A brewer taproom licensee is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all beer sold by the licensee at retail or to a retail licensee, including all beer sold directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. When the fifteenth of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after that day. The report must provide the detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require the report be submitted in an electronic format approved by the tax commissioner.
6. A brewer may have multiple taproom licenses, but may not have an ownership interest in whole or in part, or be an officer, director, agent, or employee of any other manufacturer, brewer, importer, wholesaler, or retailer, or be an affiliate thereof, whether the affiliation is corporate or by management, direction, or

control. A brewer may transfer beer in bulk, as defined by section 5-01-01, manufactured by the brewer to an affiliated brewer. For the purposes of this subsection, an "affiliated brewer taproom" means a licensed brewer taproom of which at least an eighty-five percent interest is owned by the brewer taproom, measured annually and:

- a. The brewer does not own more than three affiliated brewer taprooms;
- b. The licensed brewer taproom receiving the beer in bulk has produced no less than five thousand gallons [18927.06 liters] of beer on the premises in the preceding calendar year. For the purpose of calculating the production requirements, the production must be prorated based on the number of days beer was produced;
- c. The beer in bulk transferred in any calendar year constitutes no more than fifty percent of the beer being produced by the licensed brewer taproom receiving the beer; and
- d. For purposes of determining whether the twenty-five thousand barrel production limit under subsections 1 and 2 is being exceeded, the beer being transferred is credited to the brewer that manufactured the beer.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 77

### HOUSE BILL NO. 1190

(Representatives D. Ruby, Becker, Boschee, Johnston, Kasper)  
(Senators Heckaman, Hogue, Krebsbach, J. Roers)

AN ACT to amend and reenact sections 5-01-17 and 5-01-20 of the North Dakota Century Code, relating to domestic winery licenses and direct sales by licensed wineries.

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

**SECTION 1. AMENDMENT.** Section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **5-01-17. Domestic winery license.**

1. The tax commissioner may issue a domestic winery license to the owner or operator of a winery located within this state to produce wine. ~~The percentage of ingredients by volume, excluding water, of wine produced by a domestic winery which must be grown and produced in this state must be at least ten percent in the second year of licensure, twenty percent in the third year of licensure, thirty percent in the fourth year of licensure, forty percent in the fifth year of licensure, and fifty one percent in the sixth and subsequent years of licensure. Domestic wineries may be granted an exemption from the ingredient utilization requirement whenever the state tax commissioner determines, upon the commissioner's own motion or at the request of a domestic winery, that weather conditions, pest infestations, plant disease epidemics, or other natural causes have reduced the quantity or quality of produce grown in this state to an extent that renders compliance with the ingredient utilization requirement infeasible. The exemption is effective for one year unless the tax commissioner issues a new exemption. A domestic winery may purchase, at wholesale or retail, brandy for use of onpremise fortification. A domestic winery license may be issued and renewed for an annual fee of one hundred dollars, which is in lieu of all other license fees required by this title.~~
2. A domestic winery may sell wine produced by that winery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its wine to persons inside or outside of the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94635 liters] in a calendar year; glassware; wine literature and accessories; and cheese, cheese spreads, and other snack food items. A licensee may dispense free samples of the wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between twelve noon and twelve midnight. The tax commissioner may issue special events permits for not more than ~~twenty~~forty events per calendar year to a domestic winery allowing the winery, subject to local ordinance, to give free samples of its wine and to sell its wine by the glass or in closed containers, at off-premise events. ~~To participate in a pride of Dakota event sponsored by the department of agriculture, a domestic winery shall obtain a special events permit. Participation by a domestic winery in a pride of Dakota~~

~~event sponsored by the department of agriculture does not count against the twenty special events limitation.~~ A domestic winery may not engage in any wholesaling activities. All sales and deliveries of wines to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. For any month in which a domestic winery has made sales to a North Dakota wholesaler, that domestic winery shall file a report with the tax commissioner no later than the last day of each calendar month reporting sales made during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter.

3. A domestic winery may obtain a domestic winery license and a retailer license allowing the onpremises sales of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery.
4. A domestic winery may purchase wine in bulk from within and outside the state, excluding label approved containers and not to exceed four thousand gallons [15142 liters] per calendar year.
5. A domestic winery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all wines sold by the licensee at retail, including all wines shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. When the fifteenth of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.

**SECTION 2. AMENDMENT.** Section 5-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-20. Direct sale by licensed wineries.**

1. A licensed winery that produces no more than ~~forty-two-thousand~~ fifty-two-thousand gallons [~~18927194635~~ 194635 liters] of wine per year may sell and deliver, onsite or offsite, the wine produced by the winery directly to licensed retailers. The licensed winery may sell and deliver wine onsite to a licensed retailer who presents the retailer's license or a photocopy of the license. The winery may deliver the wine offsite if the winery:
  - a. Uses the winery's equipment, trucks, and employees to deliver the wine;
  - b. Contracts with a licensed distributor to ship and deliver the wine to the retailer; or
  - c. Contracts with a common carrier to ship and deliver the wine to the retailer directly from the winery or the winery's bonded warehouse.
2. The shipments delivered by a winery's equipment, trucks, and employees in a year may not exceed four thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters].
3. Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. The shipments delivered by a common



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carrier in a year may not exceed ~~four~~three thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters].

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 78

### HOUSE BILL NO. 1502

(Representatives Mock, Becker, Blum, J. Nelson, D. Ruby)  
(Senators Klein, Poolman)

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to the direct sale of liquor by a domestic distillery to licensed retailers; to amend and reenact section 5-01-19 of the North Dakota Century Code, relating to domestic distilleries; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 5-01-19 of the North Dakota Century Code is amended and reenacted as follows:

##### **5-01-19. Domestic distillery.**

1. The tax commissioner may issue a domestic distillery license to the owner or operator of a distillery that is located within this state which uses a majority of North Dakota farm products to manufacture and sell spirits produced on the premises. A domestic distillery license may be issued and renewed for an annual fee of one hundred dollars. This fee is in lieu of all other license fees required by this title. The tax commissioner may not issue the domestic distillery license until the applicant has established that the applicant has applied for and obtained the necessary federal registrations and permits, as required under the Internal Revenue Code of 1986 [26 U.S.C. 5001 et seq.] and the federal Alcohol Administration Act [27 U.S.C. 203], for the operation of a distilled spirits plant.
2. A domestic distillery may sell spirits produced by that distillery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or outside the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94635 liters] in a calendar year. Direct sales within this state are limited to two and thirty-eight hundredths gallons [9 liters] or less per month per person for personal use and not for resale. The packaging must conform with the labeling requirements in section 5-01-16. A licensee may dispense free samples of the spirits 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. A domestic distillery may hold events inside and outside its premises, but only on contiguous property under common ownership, allowing free samples of its spirits and to sell its spirits by the glass or in closed containers. The tax commissioner may issue special event~~event~~ permits for not more than twentyfour event~~event~~ days per calendar year to a domestic distillery allowing the domestic distillery, subject to local ordinance, to give free samples of its product and to sell its product by the glass or in closed containers, at off-premises events. ~~To participate in a pride of Dakota event sponsored by the department of agriculture, a domestic distillery shall obtain a special events permit from the tax commissioner. Participation by a domestic distillery in a pride of Dakota event sponsored by the department of agriculture does not count against the twenty special events limitation. A~~

domestic distillery may not engage in any wholesaling activities. All except as provided by section 2 of this Act, all sales and deliveries of spirits to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. However, a domestic distillery may sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the domestic distillery by the domestic winery. No later than the last business day of a calendar month, a farm distillery that has made sales to a North Dakota wholesaler during the preceding calendar month shall file a report with the tax commissioner reporting those sales.

3. A domestic distillery may obtain a domestic distillery license and a retailer license allowing the onpremises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the domestic distillery. A domestic distillery also may own or operate a winery.
4. A domestic distillery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all spirits sold by the licensee at retail or to a retail licensee, including all spirits shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. The report must provide the detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.

**SECTION 2.** A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

**Direct sale by domestic distilleries.**

1. A domestic distillery that produces no more than twelve thousand proof gallons [42000 liters] of spirits per year may sell and deliver, onsite or offsite, the spirits produced by the distillery directly to licensed retailers. The distillery may sell and deliver spirits onsite to a licensed retailer that presents the retailer's license or a photocopy of the license. The distillery may deliver the spirits offsite if the distillery:
  - a. Uses the distillery's equipment, trucks, and employees to deliver the spirits;
  - b. Contracts with a licensed distributor to ship and deliver the spirits to the retailer; or
  - c. Contracts with a common carrier to ship and deliver the spirits to the retailer directly from the distillery or the distillery's warehouse.
2. The total amount of spirits each domestic distillery may sell or deliver directly to all licensed retailers may not exceed two hundred cases per year. Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. A case may not exceed two and thirty-eight hundredths gallons [9 liters].
3. As used in this section, "proof gallon" means a gallon [3.78 liters] of liquid at sixty degrees Fahrenheit [15.5 degrees Celsius] which contains fifty percent ethyl alcohol by volume or its equivalent.

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

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 79

### HOUSE BILL NO. 1344

(Representatives Kasper, Becker, Heinert, Johnston, Lefor, Louser, D. Ruby, Steiner)  
(Senators Bekkedahl, Hogue, Klein, J. Roers)

AN ACT to amend and reenact section 5-02-13 of the North Dakota Century Code, relating to the removal of an unfinished bottle of wine from a restaurant.

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

**SECTION 1. AMENDMENT.** Section 5-02-13 of the North Dakota Century Code is amended and reenacted as follows:

##### **5-02-13. Removal of wine from restaurant.**

If a full bottle of wine has been opened and the contents partially consumed, a retail alcoholic beverage licensee whose gross sales of food are at least thirty percent of the gross sales of alcoholic beverages ~~that are consumed on the premises~~ may permit an individual purchasing the bottle ~~in conjunction with the purchase of a meal~~ to remove the bottle ~~on~~when leaving the licensed premises if the licensee ~~recorks~~reseals the bottle, ~~seals the bottle~~ with a seal that must be made conspicuously inoperative to reopen the bottle, and places a receipt of sale with the bottle. The removal of the bottle under these conditions is not an off sale of wine and is permitted without an additional license.

Approved March 8, 2019

Filed March 8, 2019

# BANKS AND BANKING

## CHAPTER 80

### SENATE BILL NO. 2179

(Senators J. Lee, Hogan, Mathern)  
(Representatives K. Koppelman, Kreidt, Roers Jones)

AN ACT to create and enact chapter 6-08.5 of the North Dakota Century Code, relating to the prevention of financial exploitation; and to amend and reenact section 6-08.1-03 of the North Dakota Century Code, relating to a financial institution's duty of confidentiality.

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

**SECTION 1. AMENDMENT.** Section 6-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-08.1-03. Duty of confidentiality.**

A financial institution may not disclose customer information to ~~anya~~ person, governmental agency, or law enforcement agency unless the disclosure is made in accordance with any of the following:

1. Pursuant to consent granted by the customer in accordance with this chapter.
2. To a person other than a governmental agency or law enforcement agency pursuant to valid legal process.
3. To a governmental agency or law enforcement agency pursuant to valid legal process in accordance with this chapter.
4. For the purpose of reporting a suspected violation of the law in accordance with this chapter.
5. For the purpose of notifying the agriculture commissioner ~~that~~ a financial institution has notified a customer of the availability of the North Dakota mediation service.
6. As part of the disclosure made of deposits of public corporations with financial institutions in the security pledge schedule verified by the custodian of securities pursuant to section 21-04-09.
7. For purposes of reporting suspected exploitation of an eligible adult as defined by section 12.1-31-07. ~~Nothing in this~~ This subsection may ~~not~~ be construed to impose ~~upon~~ a ~~duty on a~~ financial institution a ~~duty~~ to investigate an alleged or suspected exploitation of an eligible adult or to make a report to a governmental agency or law enforcement agency.

8. For purposes of reporting suspected financial exploitation of an eligible adult under chapter 6-08.5 to a law enforcement agency or the department of human services. This subsection may not be construed to impose a duty on a financial institution to investigate a suspected financial exploitation of an eligible adult or to make a report to the department of human services or law enforcement agency.

**SECTION 2.** Chapter 6-08.5 of the North Dakota Century Code is created and enacted as follows:

**6-08.5-01. Definitions.**

As used in this chapter:

1. "Account" means funds or assets held by a financial service provider, including a deposit account, savings account, share account, certificate of deposit, trust account, individual retirement account, guardianship or conservatorship account, investment or securities account, retirement account, loan, extension of credit, or safe deposit box.
2. "Eligible adult" means an individual who is at least sixty-five years of age or a vulnerable adult as defined in section 50-25.2-01.
3. "Financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of an eligible adult's money, assets, or property for one's own benefit or the benefit of a third party. The term includes defrauding an eligible adult.
4. "Financial service provider" means a financial institution, credit union, savings and loan association, or trust company.
5. "Financial transaction" means any of the following as applicable to the business or services provided by a financial service provider:
  - a. A transfer or request to transfer or disburse funds or assets in an account;
  - b. A request to initiate a wire transfer, initiate an automated clearing house transfer, or issue a money order, cashier's check, or official check;
  - c. A request to negotiate a check or other negotiable instrument;
  - d. A request to change the ownership of an account;
  - e. A request for a loan, extension of credit, or draw on a line of credit; or
  - f. A request to designate or change the designation of a beneficiary to receive any property, benefit, or contract right for an eligible adult.
6. "Law enforcement agency" means an agency authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.

**6-08.5-02. Eligible adult financial exploitation prevention - Duration of refusal or hold - Notification and reporting - Immunity.**

1. If a financial service provider has a good faith belief to suspect financial exploitation occurred, was attempted, or is being attempted, the financial service provider may refuse a financial transaction or hold a financial transaction on an account:
  - a. Belonging to the eligible adult;
  - b. On which the eligible adult is a beneficiary, including a trust, guardianship, or conservatorship account; or
  - c. Belonging to a person suspected of perpetrating financial exploitation.
2. A financial service provider may refuse a financial transaction or hold a financial transaction under this section if the department of human services or a law enforcement agency provides information to the financial service provider demonstrating it is reasonable to believe financial exploitation occurred, was attempted, or is being attempted.
3. Subsection 2 does not require a financial service provider to refuse a financial transaction or hold a financial transaction if provided with information by the department of human services or a law enforcement agency alleging financial exploitation occurred, was attempted, or is being attempted. Except as ordered by a court, a financial service provider may determine whether to refuse a financial transaction or hold a financial transaction based on the information available to the financial service provider.
4. A financial service provider refusing a financial transaction or holding a financial transaction based on a good faith belief to suspect financial exploitation occurred, was attempted, or is being attempted shall:
  - a. Except with regard to an account administered by a bank or trust company in a fiduciary capacity, make a reasonable effort to notify, orally or in writing, one or more parties authorized to transact business on the account; and
  - b. Report the incident to the department of human services, if the incident involves financial exploitation of a vulnerable adult as defined in section 50-25.2-01.
5. Notice under this section is not required to be provided to a party authorized to conduct business on the account if the party is the suspected perpetrator of financial exploitation.
6. A financial service provider, or an employee, officer, or director of a financial service provider, is immune from all criminal, civil, and administrative liability:
  - a. For refusing or not refusing a financial transaction, or for holding or not holding a financial transaction under this section; or
  - b. For actions taken in furtherance of the determination made under subdivision a, if the determination is based upon a good faith belief financial exploitation occurred, was attempted, or is being attempted.

**6-08.5-03. Reporting to a law enforcement agency or the department of human services - Immunity.**



1. If a financial service provider, or an employee, officer, or director of a financial service provider has a good faith belief to suspect financial exploitation of an eligible adult occurred, was attempted, or is being attempted, the financial service provider, or an employee, officer, or director of a financial service provider may report the information to a law enforcement agency or the department of human services.
2. This section does not impose a duty on a financial institution to investigate a suspected financial exploitation of an eligible adult or to make a report to a law enforcement agency or the department of human services.
3. A financial service provider, or an employee, officer, or director of a financial service provider, is immune from all criminal, civil, and administrative liability for reporting or not reporting under this section if the determination is made based on a good faith belief that financial exploitation occurred, was attempted, or is being attempted.

**6-08.5-04. Individuals who may be contacted regarding suspected financial exploitation - Immunity - Exemption from customer consent and notice provisions.**

1. A financial service provider may offer to an eligible adult the opportunity to submit and update periodically a list of individuals the eligible adult authorizes the financial service provider to contact if the financial service provider has reasonable cause to suspect the eligible adult is a victim or a target of financial exploitation.
2. Notwithstanding subsection 1, a financial service provider having a good faith belief to suspect an eligible adult is the victim or target of financial exploitation may convey the suspicion to one or more of the following individuals, provided the individual is not the suspected perpetrator:
  - a. An individual on the list described in subsection 1.
  - b. A co-owner, additional authorized signatory, or beneficiary on the eligible adult's account.
  - c. An attorney-in-fact, trustee, conservator, guardian, or other fiduciary who has been selected or appointed to manage some or all of the financial affairs of the eligible adult.
3. If a financial service provider provides information under this section, the financial service provider may limit the information, such as disclosing only that the financial service provider has reasonable cause to suspect the eligible adult may be a victim or target of financial exploitation, without disclosing any other details or confidential personal information regarding the financial affairs of the eligible adult.
4. The financial service provider may choose not to contact an individual on the list provided under subsection 1, if the financial service provider suspects the individual is engaged in financial exploitation.
5. The financial service provider may rely on information provided by the eligible adult in compiling a list of contact individuals.

6. A financial service provider, or an employee, officer, or director of a financial service provider, is immune from all criminal, civil, and administrative liability for contacting an individual or electing not to contact an individual under this section and for actions taken in furtherance of that determination if the determination is made based on a good faith belief financial exploitation occurred, was attempted, or is being attempted.
7. Contact with an individual, and any information provided under this section, is exempt from the customer consent provisions in sections 6-08.1-03 and 6-08.1-04.

**6-08.5-05. Refusal to accept power of attorney - Immunity.**

1. A financial service provider may refuse to accept an acknowledged power of attorney if the financial service provider has a good faith belief to suspect the principal is or may be the victim or target of financial exploitation by the agent or individual acting for or with the agent.
2. A financial service provider, or an employee, officer, or director of a financial service provider, is immune from all criminal, civil, and administrative liability for refusing to accept a power of attorney or for accepting a power of attorney under this section and for actions taken in furtherance of that determination if the determination was based on a good faith belief financial exploitation occurred, was attempted, or was being attempted.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 81

### SENATE BILL NO. 2197

(Senators Unruh, Erbele, Poolman)  
(Representatives Headland, Howe, Pyle)

AN ACT to amend and reenact subsection 4 of section 6-09-15.5 and subsection 1 of section 6-09.11-03 of the North Dakota Century Code, relating to loans for family farmers.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 6-09-15.5 of the North Dakota Century Code is amended and reenacted as follows:

4. A loan made from the fund must have either a fixed rate at one percent below the Bank's then current base for ten years or 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 and 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.

**SECTION 2. AMENDMENT.** Subsection 1 of section 6-09.11-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The Bank of North Dakota may make available an appropriate amount of funds to purchase participation interests in loans made by financial institutions for the purposes as set forth in section 6-09.11-04.
  - a. Interest charged on a participation interest purchased by the Bank under this section may not be greater than one percent less than the Bank's base rate as in effect from time to time and may float.
  - b. A loan may be a fixed rate at the Bank's then current base rate for up to ten years. The rate during the remaining term of the loan floats at the Bank's base rate as in effect from time to time.
  - c. However, the interest rate may not exceed eleven percent during the course of the loan. The Bank may charge for necessary and reasonable fees as determined by the industrial commission.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 82

### HOUSE BILL NO. 1092

(Education Committee)  
(At the request of the Bank of North Dakota)

AN ACT to amend and reenact section 6-09-38, subsection 2 of section 6-09-48, subsection 1 of section 15-62.1-02, and section 15-62.1-04 of the North Dakota Century Code, relating to the North Dakota higher education savings plan, the federal student loan program, and the state guarantee loan program; to repeal section 15-62.1-10 of the North Dakota Century Code, relating to eligibility for participation in the federal student loan program; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 6-09-38 of the North Dakota Century Code is amended and reenacted as follows:

**6-09-38. North Dakota higher education savings plan - Administration - Rules - Continuing appropriation.**

The Bank of North Dakota shall adopt rules to administer, manage, promote, and market a North Dakota higher education savings plan. The Bank shall ensure that the North Dakota higher education savings plan is maintained in compliance with internal revenue service standards for qualified state tuition programs. The Bank, as trustee of the North Dakota higher education savings plan, may impose an annual administrative fee to recover expenses incurred in connection with operation of the plan ~~or for other programs deemed to promote attendance at an institution of higher education, support the functions of the Bank related to the educational mission of the Bank, or defray the expenses of education as defined by section 529 of the Internal Revenue Code of 1986 [26 U.S.C. 529].~~ Administrative fees received by the Bank are appropriated on a continuing basis to be used as provided in this section. Contributions made during the taxable year to a higher education savings plan administered by the Bank, pursuant to the provisions of the plan, are eligible for an income tax deduction as provided in chapter 57-38. Information related to contributions is confidential except as is needed by the tax commissioner for determining compliance with the income tax deduction provided in chapter 57-38.

**SECTION 2. AMENDMENT.** Subsection 2 of section 6-09-48 of the North Dakota Century Code is amended and reenacted as follows:

2. The funds ~~shall~~must be used to support the functions of the Bank related to ~~higher education~~the educational mission of the Bank.

**SECTION 3. AMENDMENT.** Subsection 1 of section 15-62.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. To guarantee all loans ~~which~~that satisfy the requirements set forth in title IV, part B, of the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.; Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581], as amended through December 31, 1998, upon terms, conditions, and application procedures commensurate with the federal Higher

Education Act of 1965 [20 U.S.C. 1001 et seq.; Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581], as amended through December 31, 1998, if federal coinsurance of student loans guaranteed by the agency is available. If at any time the agency determines that student loans made under the terms and conditions of federal coinsurance programs are no longer adequately serving the needs of North Dakota students attending postsecondary institutions, or if federal coinsurance is no longer available, the agency shall notify the industrial commission or its designee. Upon approval of the industrial commission or its designee, the agency shall guarantee student loans without federal coinsurance pursuant to rules made by the agency relating to terms for applicant eligibility in accordance with the provisions of this chapter. Students whose loans are guaranteed by the agency must be students who have been accepted for enrollment in in postsecondary training or are attending eligible postsecondary institutions located within or outside this state, and whose loans are for the purpose of assisting them in meeting their expenses of postsecondary education. Students who are accepted for enrollment or are attending eligible proprietary or postsecondary institutions of higher education are eligible to have loans guaranteed by the agency. The agency shall, by rule, establish minimum qualifications for a person to be deemed a part-time student for purposes of this chapter.

**SECTION 4. AMENDMENT.** Section 15-62.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.1-04. Repayment of loans.**

The agency shall establish rules for the repayment, or deferment of repayment, of loans guaranteed under this chapter which are coinsured by the federal government consistent with the Higher Education Act of 1965, as amended, ~~and. The agency shall also establish~~ adopt rules for the repayment, or deferment of repayment, of loans guaranteed by the agency which are not coinsured by the federal government.

**SECTION 5. REPEAL.** Section 15-62.1-10 of the North Dakota Century Code is repealed.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 83

### SENATE BILL NO. 2098

(Industry, Business and Labor Committee)  
(At the request of the Bank of North Dakota)

AN ACT to amend and reenact section 6-09-44 of the North Dakota Century Code, relating to the Bank of North Dakota residential mortgage loan program.

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

**SECTION 1. AMENDMENT.** Section 6-09-44 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-09-44. Residential mortgages.**

1. The Bank may establish a residential mortgage loan program under which the Bank may originate residential mortgages if private sector mortgage loan services are not reasonably available. Under this program a local financial institution or credit union may assist the Bank in taking a loan application, gathering required documents, ordering required legal documents, and maintaining contact with the borrower.
2. If the Bank establishes a program under this section, at a minimum the program must provide:
  - a. An applicant must be referred to the Bank by a local financial institution or credit union;
  - b. The loan application must be for an owner-occupied primary residence; and
  - c. The Bank provide all regulatory disclosures, process and underwrite the loan, prepare closing documents, and disburse the loan; ~~and~~
  - d. ~~The terms of the loan originated by the Bank must provide:~~
    - (1) ~~The amount of the loan may not exceed an amount to be established by Bank policy;~~
    - (2) ~~The term of the loan may not exceed thirty years;~~
    - (3) ~~The rate of the loan must be equal to the Bank's market rate;~~
    - (4) ~~The maximum loan to value may not exceed eighty percent of appraised value; however, a local financial institution or credit union may take a second mortgage that does not exceed a combined loan to value of ninety-five percent; and~~
    - (5) ~~Standard credit underwriting and documentation applies.~~

3. The Bank may sell eligible first-time home buyer loans to the North Dakota housing finance agency.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 84

### SENATE BILL NO. 2099

(Industry, Business and Labor Committee)  
(At the request of the Bank of North Dakota)

AN ACT to amend and reenact section 6-09-47 of the North Dakota Century Code, relating to the medical facility infrastructure loan fund; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 6-09-47 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-09-47. Medical facility infrastructure loan fund - Continuing appropriation - Audit and costs of administration.**

1. The Bank of North Dakota shall administer a loan program to provide loans to medical facilities to conduct construction that improves the health care infrastructure in the state or improves access to existing nonprofit health care providers in the state. The construction project may include land purchases and may include purchase, lease, erection, or improvement of any structure or facility to the extent the governing board of the health care facility has the authority to authorize such activity.
2. In order to be eligible under this loan program, the applicant must be the governing board of the health care facility which shall submit an application to the Bank. The application must:
  - a. Detail the proposed construction project, which must be a project of at least one million dollars and which is expected to be utilized for at least thirty years;
  - b. Demonstrate the need and long-term viability of the construction project; and
  - c. Include financial information as the Bank may determine appropriate to determine eligibility, such as whether there are alternative financing methods.
3. ~~The governor shall establish a task force to review loan applications under this section and to make recommendations to the Bank on the loan applications. The task force must include representation of medical providers and medical facilities from the oil-producing counties in the state. The task force shall work with the Bank to establish criteria for eligibility for a loan under the program. The criteria established by the task force and the Bank must give priority to applicants that are located in oil-producing counties.~~
4. A loan provided under this section:



- a. May not exceed the lesser of fifteen million dollars or seventy-five percent of the actual cost of the project;
  - b. Must have an interest rate equal to one percent; and
  - c. Must provide a repayment schedule of no longer than twenty-five years.
- 5-4. A recipient of a loan under this section shall complete the financed construction project within twenty-four months of approval of the loan. Failure to comply with this subsection may result in forfeiture of the entire loan received under this section.
- 6-5. The medical facility infrastructure fund is a special fund in the state treasury. This fund is a revolving fund. All moneys transferred into the medical facility infrastructure fund, interest on moneys in the fund, and collections of principal and interest on loans from the fund are appropriated to the Bank on a continuing basis for the purpose of providing loans under this section.
- 7-6. Funds in the medical facility infrastructure fund may be used for loans as provided under this section and to pay the costs of administration of the fund. Annually, the Bank may deduct a service fee for administering the medical facility infrastructure fund maintained under this section.
- 8-7. The medical facility infrastructure fund must be audited in accordance with section 6-09-29. The cost of the audit and any other actual costs incurred by the Bank on behalf of the fund must be paid from the fund.
- 9-8. The Bank shall deposit loan repayment funds in the medical facility infrastructure fund.

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

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 85

### SENATE BILL NO. 2296

(Senators Wanzek, Dotzenrod, Klein)  
(Representatives Headland, D. Johnson, Pollert)

AN ACT to amend and reenact sections 6-09.7-02 and 6-09.7-05 of the North Dakota Century Code, relating to the Bank of North Dakota loan guarantee program.

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

**SECTION 1. AMENDMENT.** Section 6-09.7-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-09.7-02. Powers and duties of the Bank of North Dakota.**

The Bank of North Dakota may take, hold, and administer, on behalf of the state from any source, any property, or any interest in the property, and the income therefrom, either absolutely or in trust, for any purpose of the state guarantee loan program; provided, that no guarantee obligation of the Bank is payable out of any moneys of the Bank except those made available to the Bank under this chapter. The Bank shall establish the types of projects and ventures eligible to be guaranteed under this chapter.

**SECTION 2. AMENDMENT.** Section 6-09.7-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-09.7-05. Establishment and maintenance of adequate guarantee funds - Use of strategic investment and improvements fund.**

The Bank of North Dakota shall establish and at all times maintain an adequate guarantee reserve fund in a special account in the Bank. The Bank may request the director of the office of management and budget to transfer funds from the strategic investment and improvements fund created by section 15-08.1-08 to maintain one hundred percent of the guarantee reserve fund balance. Transfers from the strategic investment and improvements fund may not exceed a total of ~~twenty-five~~<sup>fifty</sup> million dollars. Moneys in the guarantee reserve fund are available to reimburse lenders for guaranteed loans in default. The securities in which the moneys in the reserve fund may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the state guarantee loan program and income in excess of that required to pay the cost of administering the program must be deposited in the reserve fund. The amount of reserves for all guaranteed loans must be determined by a formula that will assure, as determined by the Bank, an adequate amount of reserve.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 86

### HOUSE BILL NO. 1333

(Representatives Nathe, Howe, Lefor, Mock, Sanford)  
(Senators Bekkedahl, Cook)

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to the creation of an innovation loan fund to support technology advancement committee and loan program; to provide a continuing appropriation; and to provide for a transfer.

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

**SECTION 1.** A new chapter to title 6 of the North Dakota Century Code is created and enacted as follows:

##### Definitions.

In this chapter, unless the context otherwise requires:

1. "Commissioner" means the commissioner of the department of commerce.
2. "Committee" means the innovation loan fund to support technology advancement committee.
3. "Diversification sectors" means the following industries:
  - a. Advanced computing and data management;
  - b. Agriculture technology;
  - c. Autonomous and unmanned vehicles and related technologies;
  - d. Energy;
  - e. Health care;
  - f. Value-added agriculture;
  - g. Value-added energy; and
  - h. Any industry or area specifically identified by the committee as an industry that will contribute to the diversification of the state's economy.

##### Innovation loan fund to support technology advancement committee - Membership - Meetings.

1. The innovation loan fund to support technology advancement committee consists of:

- a. The commissioner or the commissioner's designee who shall serve as the chairperson of the committee and is a nonvoting member of the committee;
  - b. Three members representing active venture capital firms, private entities, or angel capital funds;
  - c. One member with finance-related experience, knowledge, or education; and
  - d. Three members from the private sector with expertise in the diversification sectors.
2. The commissioner, in consultation with the president of the Bank of North Dakota, shall appoint the members of the committee. The term of office of the appointed members of the committee is four years, and the terms must be staggered so that no more than one of the members' terms appointed under subdivisions b and c of subsection 1 expires each year, and so that no more than one of the members' terms appointed under subdivision d of subsection 1 expires each year. Each term of office commences on the first day of July. Members serve at the pleasure of the commissioner and may be reappointed for additional terms. Members of the committee may not invest or otherwise participate in applied research, experimentation, or operational testing associated with a loan awarded under this chapter. If a committee member appointed under subdivision b of subsection 1 ceases to represent an active venture capital firm, private entity, or angel capital fund, that individual's membership on the committee ceases immediately and the commissioner, in consultation with the president of the Bank of North Dakota, shall appoint a new member to the committee for the remainder of the term.
  3. A committee member representing the private sector is eligible to receive compensation in an amount not exceeding one hundred thirty-five dollars per day and travel and expense reimbursement as provided by law for state officers for attending meetings of the committee.
  4. The committee shall meet as necessary to make loan recommendations and provide ongoing review of research, development, and commercialization activities.

### **Innovation loan fund to support technology advancement - Innovation technology loan program.**

The department of commerce shall administer the innovation technology loan program in consultation with the Bank of North Dakota to provide loans for activities identified in this chapter. The department of commerce shall provide administrative support for the program, including the drafting of application forms, receiving applications, reviewing applications for completeness and compliance with committee policy, and forwarding complete applications to the committee in accordance with the guidelines established by the committee. Program guidelines relating to ownership of intellectual property, inventions, and discoveries must address activities and issues unique to technologies, patents, and companies created as a result of a legacy innovation technology loan.

### **Innovation technology loans - Eligibility.**

1. The committee shall establish guidelines for entities to qualify for an innovation technology loan under this section. The committee shall consider and process applications in a timely manner that does not jeopardize an applicant's opportunity to leverage other funds.
2. In determining whether to recommend approval of an application, the committee shall consider the extent to which the proposal will:
  - a. Deliver applied research, experimentation, or operational testing in one or more of the diversification sectors to create information or data to enhance North Dakota companies or industries or companies making investments in North Dakota;
  - b. Lead to the commercialization or patent of an innovation technology solution; or
  - c. Result in the development of a new company or expansion of an existing company that will diversify the state's economy through new products, investment, or skilled jobs.
3. The Bank of North Dakota shall review the business plan, financial statements, and other information necessary for the Bank to determine which applications recommended for approval by the committee will be approved by the Bank for final loan approval. The terms of the loan must include:
  - a. Zero percent interest for the first three years of the loan;
  - b. Two percent interest for the next two years of the loan; and
  - c. An interest rate equal to a standard Bank of North Dakota loan for all subsequent years.
4. To be eligible for a loan under this chapter, an entity shall agree to provide the Bank of North Dakota with information as requested by the Bank.

#### **Innovation loan fund to support technology advancement - Continuing appropriation.**

The innovation loan fund to support technology advancement is a special fund in the state treasury and must be administered by the department of commerce. All moneys in the fund are appropriated to the department of commerce on a continuing basis for the purpose of providing innovation technology loans and for administrative expenses. The department of commerce shall deposit in the innovation loan fund to support technology advancement all principal and interest paid on loans made from the fund. Interest earned on moneys in the fund must be credited to the fund.

#### **Use of loan funds.**

Loan recipients shall use innovation technology loan funds to enhance capacity and, to the extent possible, leverage state, federal, and private sources of funding. An entity receiving a loan under this chapter may not use the funds for capital or building investments or for research or other activities not identified in this chapter. The funds may not be used for academic or instructive programming, workforce training, administrative costs, or to supplant funding for regular operations of institutions of higher education. Unless otherwise approved by the committee, loan recipients may use funding only to conduct applied research, experimentation, or operational testing

within the state. If an entity awarded a loan no longer conducts its activities in the state, the interest rate of the loan shall default to the rate of a standard Bank of North Dakota loan.

**Innovation loan fund to support technology advancement - Postaward monitoring.**

Upon completion of work performed from funding provided by a loan, the department of commerce shall provide an independent review of the results. Evaluation criteria may include:

1. How the work performed has contributed to the development of a company or the expansion of an existing company, has enhanced the ability of a company to make investments in the state, or otherwise enticed a company to invest or move to the state.
2. How the work performed has led to additional economic investment of capital from public and private sector entities within and outside North Dakota.
3. How the work performed has led to or may lead to a patent or research that is commercially viable.

**SECTION 2. TRANSFER - BANK OF NORTH DAKOTA - INNOVATION LOAN FUND TO SUPPORT TECHNOLOGY ADVANCEMENT.** The Bank of North Dakota shall transfer the sum of \$15,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the innovation loan fund to support technology advancement for the purpose of providing innovation technology loans during the biennium beginning July 1, 2019, and ending June 30, 2021.

Approved May 1, 2019

Filed May 2, 2019

# CONTRACTS AND OBLIGATIONS

## CHAPTER 87

### HOUSE BILL NO. 1351

(Representatives Boschee, M. Johnson, Kading, Mitskog, Mock, Schneider)  
(Senators Bakke, Dwyer)

AN ACT to amend and reenact section 9-08-06 of the North Dakota Century Code, relating to contractual noncompete provisions.

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

**SECTION 1. AMENDMENT.** Section 9-08-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **9-08-06. In restraint of business void - Exceptions.**

Every ~~A~~ contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind is to that extent void, except:

1. ~~One who~~ A person that sells the goodwill of a business ~~and the person's partners, members, or shareholders~~ may agree with the buyer to refrain from carrying on a similar business within a ~~specified county, city, or a part of either~~ reasonable geographic area and for a reasonable length of time, so long as if the buyer or any person deriving title to the goodwill from the buyer carries on a like business ~~therein that area~~.
2. Partners, members, or shareholders, upon or in anticipation of a dissolution of ~~the~~ a partnership, limited liability company, or corporation; upon or in anticipation of a dissociation of a partner or member; or as part of an agreement addressing the dissociation or sale of a partner, member, or shareholder's ownership interest, may agree that all or any number of them will not carry on a similar business within ~~the same city~~ a reasonable geographic area where the partnership, limited liability company, or corporation business has been transacted, or within a specified part ~~thereof~~ of the area.

Approved March 28, 2019

Filed March 29, 2019

# CORPORATIONS

## CHAPTER 88

### SENATE BILL NO. 2083

(Industry, Business and Labor Committee)  
(At the request of the Securities Commissioner)

AN ACT to amend and reenact subsection 8 of section 10-04-06, subsection 1 of section 10-04-08.4, and subsection 8 of section 10-04-10 of the North Dakota Century Code, relating to the manual exemption from registration of securities, and refund of filing and registration fees.

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

**SECTION 1. AMENDMENT.** Subsection 8 of section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

8. A nonissuer transaction by or through a broker-dealer and agent, both of which are registered or exempt from registration under this chapter, or a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:
  - a. The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
  - b. Such securities are sold at prices reasonably related to the current market price;
  - c. Such securities do not constitute the whole or part of an unsold allotment to, or subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;
  - d. Such securities are listed in ~~Standard and Poor's~~, Mergent's Industrial Manual, Mergent's Bank and Finance Manual, Mergent's Transportation Manual, Mergent's Public Utility Manual, or Fitch investor service, incorporated, are on the OTCQX or OTCQB markets operated by OTC Markets Group Incorporated, or are filed under section 13 or 15(d) of the Securities Exchange Act of 1934 [ch. 404, title I, sec. 1; 48 Stat. 881; 15 U.S.C. 78 et seq.]; and
  - e. ~~Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States; and~~



- f. Any one of the following requirements is met:
- (1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading on the national association of securities dealers automated quotation system;
  - (2) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
  - (3) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or
  - (4) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization.

**SECTION 2. AMENDMENT.** Subsection 1 of section 10-04-08.4 of 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.
  - b. A unit investment trust may file an initial notice filing for a definite dollar amount 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. An investment company or unit investment trust may file an initial notice filing for an indefinite dollar amount and pay a ~~nonrefundable~~ filing fee of 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 date 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 hundred twenty-five 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 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 3. AMENDMENT.** Subsection 8 of section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

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 broker-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 broker-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.~~

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 89

### SENATE BILL NO. 2283

(Senators Klein, Kreun, Vedaa)  
(Representative Lefor)

AN ACT to create and enact a new section to chapter 10-04 of the North Dakota Century Code, relating to the registration of securities.

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

**SECTION 1.** A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

##### **Registration by coordination.**

1. A security for which a registration statement has been filed under the federal Securities Act of 1933 [15 U.S.C. 77a et seq.] in connection with the same offering may be registered by coordination under this section. Only the issuer of the security or a broker-dealer registered under section 10-04-10 may make an application for registration of securities by coordination.
2. A registration statement and accompanying records under this section must contain or be accompanied by all of the following records in addition to the information specified in section 10-04-08, a payment of an initial filing fee in the amount as set forth in subsection 2 of section 10-04-08, and a consent to service of process conforming to the requirements of section 10-04-14:
  - a. A copy of the latest form of prospectus filed under the federal Securities Act of 1933 [15 U.S.C. 77a et seq.].
  - b. A copy of the articles of incorporation and bylaws, or substantial equivalents, currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter.
  - c. Copies of any other information or any other records filed by the issuer under the federal Securities Act of 1933 [15 U.S.C. 77a et seq.] requested by the commissioner.
  - d. An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after filing with the federal securities and exchange commission.
3. A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement if all the following conditions are satisfied.

- a. A stop order under subsection 4 or issued by the federal securities and exchange commission is not in effect and a proceeding is not pending against the issuer under section 10-04-09.
  - b. The registration statement has been on file for at least twenty days or a shorter period provided by rule adopted or order issued under this chapter.
4. The registrant promptly shall notify the commissioner in a record of the date the federal registration statement becomes effective and the content of any price amendment and promptly shall file a record containing the price amendment. If the notice is not timely received, the commissioner may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending the registration statement's effectiveness until compliance with this section. The commissioner promptly shall notify the registrant of an order by sending a copy of the order to the registrant and if the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of issuance.
5. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the commissioner, the registration statement is automatically effective under this chapter at the time all the conditions are satisfied or waived. If the registrant notifies the commissioner of the date the federal registration statement is expected to become effective, the commissioner promptly shall notify the registrant and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the commissioner intends the institution of a proceeding under section 10-04-09. The notice by the commissioner does not preclude the institution of such a proceeding.
6. Registration under this section is effective for a period of one year. A renewal fee of one hundred fifty dollars must be paid for the renewal of the registration of the securities for additional periods of one year.

Approved March 14, 2019

Filed March 14, 2019

**CHAPTER 90****SENATE BILL NO. 2200**

(Senators Wardner, Heckaman)  
(Representatives Boschee, Pollert)

AN ACT to amend and reenact subsection 1 of section 10-06.1-01 of the North Dakota Century Code, relating to the definition of farming or ranching.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 10-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It does not include production of timber or forest products, ~~nor does it include the growing or processing of marijuana under chapter 19-24.1, or~~ a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 91

### HOUSE BILL NO. 1388

(Representatives McWilliams, Howe, Jones, Pyle, D. Ruby, Simons, Skroch)  
(Senators O. Larsen, Osland)

AN ACT to amend and reenact section 10-06.1-12 of the North Dakota Century Code, relating to persons eligible for corporate farm ownership.

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

**SECTION 1. AMENDMENT.** Section 10-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **10-06.1-12. Corporation or limited liability company allowed to engage in the business of farming or ranching - Requirements.**

This chapter does not prohibit a domestic corporation or a domestic limited liability company from owning real estate and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapter 10-19.1 or the limited liability company meets all the requirements of chapter 10-32.1 which are not inconsistent with this chapter. The following requirements also apply:

1. If a corporation, the corporation must not have more than fifteen shareholders. If a limited liability company, the limited liability company must not have more than fifteen members.
2. Each shareholder or member must be related to each of the other shareholders or members within one of the following degrees of kinship or affinity: parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, second cousin, or the spouse of a person so related.
3. Each shareholder or member must be an individual or one of the following:
  - a. A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
  - b. An estate of a decedent who was related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
4. A trust or an estate may not be a shareholder or member if the beneficiaries of the trust or the estate together with the other shareholders or members are more than fifteen in number.
5. Each individual who is a shareholder or member must be a citizen of the United States or a permanent resident alien of the United States.

6. If a corporation, the officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of the corporation's shareholders must be an individual residing on or operating the farm or ranch. If a limited liability company, the governors and managers of the limited liability company must be members who are actively engaged in operating the farm or ranch and at least one of its members must be an individual residing on or operating the farm or ranch.
7. An annual average of at least sixty-five percent of the gross income of the corporation or limited liability company over the previous five years, or for each year of its existence, if less than five years, must have been derived from farming or ranching operations.
8. The income of the corporation or limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross income of the corporation or limited liability company.

Approved April 17, 2019

Filed April 18, 2019

## CHAPTER 92

### SENATE BILL NO. 2326

(Senators Dwyer, Luick)  
(Representatives Klemin, Lefor)

AN ACT to create and enact a new subsection to section 10-19.1-26, a new subsection to section 10-32.1-08, a new section to chapter 43-51 of the North Dakota Century Code, relating to general powers of a corporation and limited liability company and registration requirements; and to amend and reenact sections 10-06.1-17, subsection 4 of section 10-15-53.1, subsection 1 of section 10-19.1-47, subsection 3 of section 10-19.1-146, subsection 2 of section 10-31-02.2, subsections 5 and 6 of section 10-31-13, subsection 3 of section 10-32.1-89, subsection 3 of section 10-33-139, section 10-35-29, subsection 3 of section 10-36-07, section 43-54-05, subsection 3 of section 45-10.2-108, section 45-11-04.1, subsection 4 of section 45-22-03, and subsection 3 of section 45-22-21.1, and section 47-22-05 of the North Dakota Century Code, relating to registration and reports of corporations, limited liability companies, and partnerships.

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

<sup>23</sup> **SECTION 1. AMENDMENT.** Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **10-06.1-17. Annual report - Contents - Filing requirements.**

Before April sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state an annual report signed as provided in subsection 54 of section 10-19.1-01 if a corporation and subsection 47 of section 10-32.1-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. ~~An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement.~~ An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.
3. With respect to each corporation:

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<sup>23</sup> Section 10-06.1-17 was also amended by section 4 of House Bill No. 1045, chapter 94.



- a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
4. With respect to each shareholder or member:
    - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
    - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
    - c. The relationship of each;
    - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
    - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
  5. With respect to management:
    - a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
    - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
  6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
  7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.
  8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
  9. A corporation engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-19.1, except that the penalties must be calculated from the date of the report required by this section.

10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-32.1, except that the penalties must be calculated from the date of the report required by this section.

**SECTION 2. AMENDMENT.** Subsection 4 of section 10-15-53.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The annual report must be delivered to the secretary of state with the fees provided in section 10-15-54 before April first of each year, except the first annual report of a cooperative or foreign cooperative must be delivered before April first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state.
  - a. ~~An annual report in a sealed envelope postmarked by the United States postal service before April first, an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, or an annual report electronically transmitted to the secretary of state with a transmission time before April first is in compliance with this requirement. When a filing date falls on a Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment or transmission date on the next business day complies with this requirement.~~
  - b. The secretary of state shall file the report if the report conforms to the requirements of subsections 1 and 2.
- (1)a. If the report does not conform to those requirements, the report must be returned to the cooperative or foreign cooperative for any necessary corrections.
- (2)b. If the report is filed before the deadlines provided in this section, any penalty for the failure to file a report within the time provided does not apply if the report is corrected to conform to the requirements of subsections 1 and 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for corrections.

**SECTION 3.** A new subsection to section 10-19.1-26 of the North Dakota Century Code is created and enacted as follows:

A corporation only may seek to obtain a license or permit required of the state after the articles of incorporation are filed with the secretary of state.

**SECTION 4. AMENDMENT.** Subsection 1 of section 10-19.1-47 of the North Dakota Century Code is amended and reenacted as follows:

1. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take ~~written action, signed by all of the directors, if the articles so provide,~~ the same action at a meeting of the board at which all directors were present.

<sup>24</sup> **SECTION 5. AMENDMENT.** Subsection 3 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

3. Except for the first annual report, the annual report must be delivered to the secretary of state:
  - a. By a corporation, before August second of each year; and
  - b. By a foreign corporation, before May sixteenth of each year.

~~The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in the year following the calendar year of the effective date stated in the articles of incorporation. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this subsection, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this subsection, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.~~

**SECTION 6. AMENDMENT.** Subsection 2 of section 10-31-02.2 of the North Dakota Century Code is amended and reenacted as follows:

2. At the time the registration is filed with the secretary of state, the professional limited liability partnership or foreign limited liability partnership also shall file a:
  - a. A certificate from the regulating board of the profession involved that each of the partners who will practice the profession in this state is licensed to practice the profession in this state; or
  - b. If there is one or more minority owners, a certificate from the regulating board of the profession of the limited liability partnership certifying that each of the partners who will practice the profession in this state, if any, is licensed to practice the profession in this state and a certificate from the limited liability partnership identifying the minority owners and the express law authorizing minority ownership.

**SECTION 7. AMENDMENT.** Subsections 5 and 6 of section 10-31-13 of the North Dakota Century Code are amended and reenacted as follows:

5. In order to regulate organizations that have minority ownership, the secretary of state ~~shall~~may collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has a minority owner. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32.1-92. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

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<sup>24</sup> Section 10-19.1-146 was also amended by section 16 of House Bill No. 1045, chapter 94.

6. In order to regulate organizations that have ownership that renders more than one professional service, the secretary of state shall~~may~~ collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has ownership that renders more than one professional service. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32.1-92. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

**SECTION 8.** A new subsection to section 10-32.1-08 of the North Dakota Century Code is created and enacted as follows:

A limited liability company only may seek to obtain a license or permit required by the state after the articles of organization are filed with the secretary of state and the limited liability company has one or more members.

**SECTION 9. AMENDMENT.** Subsection 3 of section 10-32.1-89 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report of a limited liability company or foreign limited liability company must be delivered to the secretary of state before November sixteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be delivered before November sixteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state.
  - a. ~~An annual report in a sealed envelope postmarked by the United States postal service before November sixteenth, an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, or an annual report electronically transmitted to the secretary of state with a transmission time before November sixteenth, is in compliance with this requirement.~~
  - b. The secretary of state must file the report if the report conforms to the requirements of subsections 1 and 2.
- (1)a. If the report does not conform, then it must be returned to the limited liability company or foreign limited liability company for any necessary corrections.
- (2)b. If the report is filed before the deadlines provided in this subsection, then penalties for the failure to file a report within the time provided do not apply if the report is corrected to conform to the requirements of subsections 1 and 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

**SECTION 10. AMENDMENT.** Subsection 3 of section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report must be delivered to the secretary of state before February ~~first~~second of each year, except that the first annual report must be delivered before February ~~first~~second of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state.

- a. ~~An annual report in a sealed envelope postmarked by the United States postal service before February first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February first, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.~~
  - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
- (1)~~a.~~ If the report does not conform, it must be returned to the corporation for any necessary corrections.
- (2)~~b.~~ If the report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply, if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

**SECTION 11. AMENDMENT.** Section 10-35-29 of the North Dakota Century Code is amended and reenacted as follows:

**10-35-29. Filing of annual report and payment of publicly traded corporation franchise fee.**

1. Except for the first annual report and publicly traded corporation franchise fee, the annual report and publicly traded corporation franchise fee must be delivered to the secretary of state before December second of each year. The first annual report and payment of the publicly traded corporation franchise fee must be delivered before the date provided in the year following the calendar year in which the statement described in subdivision b of subsection 6 of section 10-35-02 takes effect.
2. ~~An annual report and publicly traded corporation franchise fee in a sealed envelope postmarked by the United States postal service before the date provided in subsection 1, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in subsection 1, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.~~
3. The secretary of state must file the annual report if the annual report conforms to the requirements of section 10-35-28 and the publicly traded corporation franchise fee has been paid.
  - a. If the annual report does not conform or adequate payment has not been made, the secretary of state must notify the publicly traded corporation of any necessary corrections or payment.
  - b. If the annual report is corrected and filed with the payment before the date provided in subsection 1, or within thirty days after the publicly traded corporation was notified of corrections or payment by the secretary of state, then the penalties provided in section 10-35-31 for failure to file an annual report within the time provided do not apply.

- 4.3. The secretary of state may extend the annual report filing date provided in subsection 1 for a period not to exceed eleven months after the filing date provided in subsection 1 if a written application for an extension is delivered before the date provided in subsection 1.

**SECTION 12. AMENDMENT.** Subsection 3 of section 10-36-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report must be delivered to the secretary of state before February second of each year, except that the first annual report must be delivered before February second of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state.
  - a. ~~An annual report in a sealed envelope postmarked by the United States postal service before February second, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February second, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.~~
  - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
- (1)a. If the report does not conform, it must be returned to the nonprofit limited liability company or foreign nonprofit limited liability company for any necessary corrections.
- (2)b. If the report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply, if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

**SECTION 13.** A new section to chapter 43-51 of the North Dakota Century Code is created and enacted as follows:

**Definition - Registration - Obtaining a license or permit.**

1. For purposes of this section "occupational or professional certificate, permit, or license" means a certificate, permit, or license issued by or on behalf of the state by any of the state's licensing authorities or occupational or professional boards.
2. A business entity that has a registration requirement with the secretary of state only may seek to obtain an occupational or professional certificate, permit, or license required of the state after the registration is filed with the secretary of state.

**SECTION 14. AMENDMENT.** Section 43-54-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-54-05. Renewal of registration.**

A registration issued under this chapter expires June thirtieth of each calendar year and may be renewed upon submission of a renewal fee of fifty dollars and provision of proof of continuous insurance coverage as required for registration. The application for renewal must be ~~postmarked~~delivered to the secretary of state before July first of each year. The registrar shall cancel the registration of an individual who fails to file a timely application for the renewal of registration. The cancellation must be without notice or opportunity for hearing. An individual whose registration has been canceled and who desires to reregister must file an initial application, pay the initial application fee, and provide proof of current errors and omissions insurance. An individual registered under this chapter may not engage in any activity under this chapter after June thirtieth of any year unless that individual has a valid registration.

**SECTION 15. AMENDMENT.** Subsection 3 of section 45-10.2-108 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the certificate of limited partnership or certificate of authority was filed by the secretary of state.
  - a. ~~An annual report in a sealed envelope postmarked by the United States postal service on or before April first or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before April first, complies with the delivery requirement under this subsection.~~
  - b. The secretary of state shall file the report if the report conforms to the requirements of subsection 2.
- (1)a. If the report does not conform, then the report must be returned to the limited partnership or foreign limited partnership for any necessary corrections.
- (2)b. If the report is filed before the deadlines provided in this subsection, then penalties for the failure to file a report within the time provided do not apply if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

**SECTION 16. AMENDMENT.** Section 45-11-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**45-11-04.1. Renewal.**

A fictitious name certificate filed under this chapter must be renewed every five years from the date of the initial filing. The statement of renewal must be executed by the partnership on forms prescribed by the secretary of state ~~which are sent to the address of the principal place of business at least ninety days before the deadline for filing.~~ The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, a brief description of the nature of business in which the partnership is engaged in this state, the names and addresses of all general partners, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state

shall file the statement. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the statement to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If the statement of renewal reflects a change of membership, the statement of renewal may not be filed until payment of the fees required for these changes are paid as required by section 45-11-05.1. The secretary of state shall provide notice sent to the address of the principal place of business at least ninety days before the deadline for filing the state of renewal. If a partnership fails to file the statement of renewal when due, the fictitious name certificate must be canceled by the secretary of state and notice of the cancellation must be mailed to the address of the principal place of business.

**SECTION 17. AMENDMENT.** Subsection 4 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

4. An original of the registration must be filed with the secretary of state.
  - a. If the secretary of state finds the registration conforms to law and the fees provided in section 45-22-22 are paid, the secretary of state shall endorse on the original the word "filed" and the day, month, and year of the filing and shall file the original in the office of the secretary of state.
  - b. If any statement in the registration is false when made or becomes inaccurate after the registration is filed, making the registration false or inaccurate in any respect, the limited liability partnership shall file promptly with the secretary of state an amended or corrected registration ~~or reflect the changes on the limited liability partnership's next annual report.~~ If only a change of address of the principal executive office is required, an amended or corrected registration need not be filed. However, the change of address of the principal executive office must be reported in the next annual report filed after the change or be submitted in writing to the secretary of state without a filing fee.
  - c. In the case of a change in a foreign limited liability partnership's name, a foreign limited liability partnership shall file promptly with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction of origin.
  - d. In the case of a termination or merger:
    - (1) A foreign limited liability partnership that is not the surviving organization need not file an amended registration but, within thirty days after the merger or termination becomes effective, shall file with the secretary of state a certificate to that effect authenticated by the proper officer of the foreign limited liability partnership's jurisdiction of origin.
    - (2) It is not necessary for any foreign limited liability partnership, which is the surviving organization in a merger, to procure a new or amended registration unless the name of the foreign limited liability partnership is changed or unless the foreign limited liability partnership desires to pursue in this state purposes other than those which the foreign limited liability partnership is authorized to transact in this state.



**SECTION 18. AMENDMENT.** Subsection 3 of section 45-22-21.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report of a limited liability partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited liability partnership must be delivered before April first of the year following the calendar year in which the registration is filed by the secretary of state. A limited liability partnership in existence on July 1, 1999, shall file the first annual report before April first in the year of the expiration of the registration in effect on July 1, 1999.
  - a. ~~An annual report in a sealed envelope postmarked by the United States postal service before April first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, complies with this requirement.~~
  - b. The secretary of state must file the annual report if the annual report conforms to the requirements of subsection 2.
- (1)~~a.~~ If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.
- (2)~~b.~~ If the annual report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply if the annual report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

**SECTION 19. AMENDMENT.** Section 47-22-05 of the North Dakota Century Code is amended and reenacted as follows:

**47-22-05. Duration and renewal.**

Registration of a mark hereunder is effective for a term of ten years from the date of registration and, upon application filed prior to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed in the same manner as a new application for a like term. A renewal fee of thirty dollars for one class of goods or services and twenty dollars for each additional class, payable to the secretary of state, must accompany the application for renewal of the registration.

A registration may be renewed for successive periods of ten years in like manner.

The secretary of state shall notify registrants hereunder of the necessity of renewal ~~with~~~~in~~~~at~~~~least~~ ninety days ~~preceding~~~~before~~ the expiration of the ten years ~~from the date of registration~~ by writing to the last-known address of the registrants.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 93

### HOUSE BILL NO. 1127

(Representatives Laning, B. Anderson, Tveit)  
(Senator Anderson)

AN ACT to amend and reenact sections 10-15-08.1, 10-19.1-13, and 10-32.1-11, subsection 14 of section 10-32.1-92, section 10-33-10, subdivision I of subsection 1 of section 10-33-140, subsection 3 of section 10-34-04, subdivision I of subsection 1 of section 10-36-08, section 45-10.2-10, subsection 13 of section 45-10.2-109, sections 45-11-01, 45-13-04.1, 45-22-04, and 45-23-03, subsection 13 of section 45-23-08, and section 47-25-03 of the North Dakota Century Code, relating to the names of cooperatives, corporations, limited liability companies, domestic and foreign real estate investment trusts, limited partnerships, fictitious partnerships, and limited liability partnerships; and to provide a contingent effective date.

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

**SECTION 1. AMENDMENT.** Section 10-15-08.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **10-15-08.1. Cooperative name.**

1. The cooperative name:
  - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. May contain the word "corporation" or "incorporated" or an abbreviation of either of those words.
  - c. May not contain a word or phrase ~~that indicates indicating or implies that implying~~ it is organized for a purpose other than one or more business purposes for which a cooperative association may be organized under this chapter.
  - d. ~~May not be the same as, or deceptively similar to.~~ Must be distinguishable in the records of the secretary of state from the name, whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles of association of a domestic cooperative or the application for authority of a foreign cooperative, a record in compliance with subsection 2 of:
    - (1) Another cooperative association;
    - (2) A corporation;
    - (3) A limited liability company;
    - (4) A limited liability partnership;

- (5) A limited partnership;
  - (6) A limited liability limited partnership;
  - (7) A name the right to which is, at the time of organization, in some manner reserved;
  - (8) A fictitious name registered with the secretary of state as provided in chapter 45-11;
  - (9) A trade name registered with the secretary of state as provided in chapter 47-25; or
  - (10) A trademark or service mark registered in the manner provided in chapter 47-22.
2. If the secretary of state determines a cooperative name is ~~deceptively similar to~~indistinguishable from another name for purposes of this chapter, then the cooperative name may not be used unless there is filed with the articles of association or application for authority:
    - a. A written consent to use the name obtained from the domestic or foreign corporation, limited liability company, limited liability partnership, limited liability limited partnership, or limited partnership authorized to do business in this state having a ~~deceptively similar an~~indistinguishable name, or the holder of a reserved name, registered trade name, fictitious name, or trademark or service mark; or
    - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
  3. The secretary of state shall determine whether a cooperative name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
  4. This section and section 10-15-08.2 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;
      - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
      - (4) Any other rights to the exclusive use of names or symbols; or
    - b. Derogate the common law or the principles of equity.
  5. A cooperative that is involuntarily dissolved by the secretary of state under section 10-15-53.2 may reacquire the right to use that name by reinstating the cooperative within the time provided in section 10-15-53.3 or by refiling articles of association, unless the name has been adopted for use or reserved

by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment as provided in subdivision ~~d~~ of subsection 42. A cooperative that is unable to reacquire the use of its name shall adopt a new name that complies with this section.

6. A cooperative that files its articles of association with an effective date later than the date of filing as provided in section 10-15-07 shall maintain the right to the name until the effective date.

**SECTION 2. AMENDMENT.** Section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-13. Corporate name.**

1. The corporate name:
  - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
  - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase that ~~indicates~~indicating or ~~implies~~implying the corporation:
    - (1) Is incorporated for a purpose other than:
      - (a) A lawful business purpose for which a corporation may be incorporated under this chapter; or
      - (b) For a purpose stated in its articles of incorporation; or
    - (2) May not be incorporated under this chapter.
  - e. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record that complies with subsection 3, of:
      - (a) Another corporation;
      - (b) A corporation incorporated or authorized to do business in this state under another chapter of this code;
      - (c) A limited liability company;
      - (d) A limited partnership;
      - (e) A limited liability partnership; or

- (f) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11;
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a corporate name is "deceptively similar" to distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
  3. If the secretary of state determines ~~that~~ a corporate name is "deceptively similar" to indistinguishable in the secretary of state's records from another name for purposes of this chapter, ~~then~~ the corporate name may not be used unless there is filed with the articles:
    - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be ~~deceptively similar~~ indistinguishable; or
    - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
  4. This ~~subsection~~ section does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
  5. This section and section 10-19.1-14 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;
      - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
      - (4) Any other rights to the exclusive use of names or symbols; or
    - b. Derogate the common law or the principles of equity.
  6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any

- of the other organizations, if the other organization whose name is sought to be used:
- a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-19.1-146 or 10-19.1-146.1 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 23. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:
- a. By refiling articles of incorporation pursuant to section 10-19.1-11;
  - b. By amending pursuant to section 10-19.1-17; or
  - c. By reinstating pursuant to section 10-19.1-146.
9. Subject to section 10-19.1-133, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, ~~but need not~~, be submitted to and approved by the shareholders as provided in section 10-19.1-18.
11. A corporation that files its articles of incorporation with an effective date later than the date of filing as provided in section 10-19.1-12 shall maintain the right to the name until the effective date.

**SECTION 3. AMENDMENT.** Section 10-32.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**10-32.1-11. Limited liability company name.**

1. The limited liability company name:
  - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange table;
  - b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;
  - c. May not contain:
    - (1) The word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or ~~any~~ abbreviation of these words; or
    - (2) The words "limited" or "company" without association to the words "limited liability company" or the abbreviations of these words as provided in subsection b;
  - d. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that~~ implying the limited liability company:
    - (1) Is organized for a purpose other than:
      - (a) A lawful business purpose for which a limited liability company may be organized under this chapter; or
      - (b) For a purpose stated in its articles of organization; or
    - (2) May not be organized under this chapter; and
  - e. ~~May not be the same as, or deceptively similar to~~ Must be distinguishable in the records of the secretary of state from:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record which complies with subsection 3, of:
      - (a) Another limited liability company;
      - (b) A corporation;
      - (c) A limited partnership;
      - (d) A limited liability partnership; or
      - (e) A limited liability limited partnership;

- (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11;
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a limited liability company name is ~~deceptively similar to~~ distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
3. If the secretary of state determines ~~that~~ a limited liability company name is ~~deceptively similar to~~ indistinguishable in the secretary of state's records from another name for purposes of this chapter, ~~then~~ the limited liability company name may not be used unless there is filed with the articles:
  - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be ~~deceptively similar~~ indistinguishable; or
  - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. This section and section 10-32.1-12 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other rights to the exclusive use of names or symbols.
  - b. Derogate the common law or the principles of equity.
5. A domestic or foreign limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:
  - a. Was organized, incorporated, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;



- c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
6. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.
7. A limited liability company whose period of existence has expired or that is involuntarily terminated by the secretary of state pursuant to section ~~40-32.1-89~~10-32.1-90 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32.1-20, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection ~~23~~. A limited liability company that cannot reacquire the use of its limited liability company name shall adopt a new limited liability company name which complies with the provisions of this section:
- a. By refiling the articles of organization pursuant to section 10-32.1-20;
  - b. By amending pursuant to section 10-32.1-21; or
  - c. By reinstating pursuant to section 10-32.1-91.
8. Subject to section 10-32.1-73, this section applies to ~~any~~ foreign limited liability company transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
9. An amendment that only changes the name of the limited liability company may be authorized by a resolution approved by the board and may, ~~but need not~~ be submitted to and approved by the members as provided in subdivision b of subsection 1 of section 10-32.1-21.
10. A limited liability company that files its articles of organization with an effective date later than the date of filing as provided in subdivision b of subsection 2 of section 10-32.1-20 shall maintain the right to the name until the effective date.

**SECTION 4. AMENDMENT.** Subsection 14 of section 10-32.1-92 of the North Dakota Century Code is amended and reenacted as follows:

14. Filing a consent to use ~~of a~~ name, ten dollars.

**SECTION 5. AMENDMENT.** Section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-10. Corporate name.**

## 1. The corporate name:

- a. Must be in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
- b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
- c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
- d. May not contain a word or phrase ~~that indicates~~indicating or ~~implies~~implying the corporation:
  - (1) Is incorporated for a purpose other than:
    - (a) A lawful nonprofit purpose for which a corporation may be incorporated under this chapter; or
    - (b) For a purpose stated in its articles; or
  - (2) May not be incorporated under this chapter.
- e. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
  - (1) The name, whether foreign and authorized to conduct activities in this state or domestic unless there is filed with the articles a record that complies with subsection 23, of:
    - (a) Another corporation;
    - (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
    - (c) A limited liability company;
    - (d) A limited partnership;
    - (e) A limited liability partnership; or
    - (f) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11;
  - (4) A trade name registered in the manner provided in chapter 47-25; or

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- (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a corporate name is ~~"deceptively similar" to indistinguishable in the secretary of state's records from~~ another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
  3. If the secretary of state determines that a corporate name is ~~"deceptively similar" to indistinguishable in the secretary of state's records from~~ another name for purposes of this chapter, ~~then~~ the corporate name may not be used unless there is filed with the articles:
    - a. The written consent of the holder of the rights to the name the proposed name is determined to be ~~deceptively similar to indistinguishable;~~ or
    - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
  4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
  5. This section and section 10-33-11 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;
      - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, or service marks; or
      - (4) Any other rights to the exclusive use of names or symbols; or
    - b. Derogate the common law or the principles of equity.
  6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
    - a. Was incorporated, organized, formed, or registered under the laws of this state;
    - b. Is authorized to conduct activities or transact business in this state;
    - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - d. Holds a fictitious name registered in the manner provided in chapter 45-11;

- e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from conducting activities under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
  8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-33-139 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 23. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section:
    - a. By refiling articles of incorporation pursuant to section 10-33-08;
    - b. By amending pursuant to section 10-33-14; or
    - c. By reinstating pursuant to section 10-33-139.
  9. Subject to section 10-33-126, this section applies to ~~any~~ foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
  10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, ~~but need not~~, be submitted to and approved by the members as provided in section 10-33-15.
  11. A corporation that files its articles of incorporation with an effective date later than the date of filing as provided in section 10-33-09 shall maintain the right to the name until the effective date.

**SECTION 6. AMENDMENT.** Subdivision l of subsection 1 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

- ~~l. Filing a consent to use of a deceptively similar name, ten dollars.~~

**SECTION 7. AMENDMENT.** Subsection 3 of section 10-34-04 of the North Dakota Century Code is amended and reenacted as follows:

3. A domestic or foreign real estate investment trust shall register with the secretary of state by submitting an application signed by a trustee which includes:
  - a. ~~The name of the real estate investment trust which may not be the same or deceptively similar to~~ must be distinguishable in the records of the secretary of state from the name of any other another real estate investment trust registered with the secretary of state, or ~~any~~ corporation,

limited liability company, limited partnership, limited liability partnership, limited liability limited partnership, or anya name that is in some manner reserved with the secretary of state, ~~that is a fictitious trade name registered as provided in chapter 45-11, or that is a trade name registered as provided in chapter 47-25, or is a trademark or service mark registered as provided in chapter 47-22,~~ unless ~~there is filed with the secretary of state a written consent of the holder of the similar~~indistinguishable trade name to use the name proposed by the real estate investment trust is filed with the secretary of state. The name may not contain the word "corporation", "company", "incorporated", "limited liability company", or anya abbreviation of these words. The secretary of state shall determine whether a name is distinguishable in the secretary of state's records and may adopt rules reasonable or necessary for making these determinations.

- b. The state and date of its formation.
- c. The name, address, and principal place of business of each trustee and officer.
- d. The name of its registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
- e. The address of the principal place of business.
- f. A statement that the secretary of state is appointed the agent of the real estate investment trust for service of process as provided in section 10-01.1-13.

**SECTION 8. AMENDMENT.** Subdivision 1 of subsection 1 of section 10-36-08 of the North Dakota Century Code is amended and reenacted as follows:

- l. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

**SECTION 9. AMENDMENT.** Section 45-10.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-10. Limited partnership name.**

1. The name of each limited partnership as set forth in the certificate of limited partnership:
  - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain without abbreviation the words "limited partnership" or the abbreviation "L.P." or "LP", either of which abbreviations may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state.
  - c. May contain the name of anya partner.

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- d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
- e. May not contain a word or phrase ~~that indicates~~indicating or ~~implies that~~implying the limited partnership:
- (1) Is organized for a purpose other than:
    - (a) A lawful purpose for which a limited partnership may be organized under this chapter; or
    - (b) For a purpose stated in its certificate of limited partnership; or
  - (2) May not be organized under this chapter.
- f. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
- (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate of limited partnership a record in compliance with subsection 3, of:
    - (a) Another limited partnership;
    - (b) A corporation;
    - (c) A limited liability company;
    - (d) A limited liability partnership; or
    - (e) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of the filing of the certificate of limited partnership, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11;
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a limited partnership name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
3. If the secretary of state determines a limited partnership name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from another name for purposes of this chapter, ~~then~~ the limited partnership name may not be used unless there is filed with the articles:

- a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be ~~deceptively similar~~ indistinguishable; or
  - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. Subsection 3 does not affect the right of a limited partnership existing on the effective date of this chapter, or a foreign limited partnership authorized to do business in this state on that date, to continue the use of its name.
5. This section and section 45-10.2-11 do not:
- a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other right to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
6. A limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may include in its name, subject to the requirements of subsection 1, the name of any of the organizations, if the other organization whose name is sought to be used:
- a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a limited partnership in violation of this section does not affect or vitiate its limited partnership existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited partnership from doing business under a name assumed in violation of this section, although its certificate of limited partnership may have been filed with the secretary of state.

8. A limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state as provided in section 45-10.2-108 or ~~45-10.2-108.1~~ may reacquire the right to use that name by refiling a certificate of limited partnership pursuant to section 45-10.2-23 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A limited partnership that cannot reacquire the use of its limited partnership name shall adopt a new limited partnership name that complies with this section by refiling a certificate of limited partnership as provided in section 45-10.2-23; by amending its certificate of limited partnership as provided in section 45-10.2-24; or by reinstating the limited partnership pursuant to section 45-10.2-108. If the new limited partnership name has been adopted for use or reserved by another person, the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3.
9. Subject to section 45-10.2-78, this section applies to ~~any~~ foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. A limited partnership ~~that files~~ refiling its certificate of limited partnership with an effective date later than the date of filing as provided in subsection 3 of section 45-10.2-27 shall maintain the right to the name until the effective date.

**SECTION 10. AMENDMENT.** Subsection 13 of section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

13. Filing a consent to use a ~~deceptively similar~~ name, ten dollars.

**SECTION 11. AMENDMENT.** Section 45-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**45-11-01. Partnership - Use of fictitious 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~~ showing 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 45-10.2 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:



- a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
- b. 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".
- c. ~~May not be the same as or deceptively similar to any~~Must be distinguishable in the records of the secretary of state from a name reserved or registered with the secretary of state unless there is filed with the fictitious name certificate a written consent from the holder of the ~~similar~~indistinguishable name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:
  - (1) ~~Any~~A corporate name;
  - (2) ~~Any~~A limited liability company name;
  - (3) ~~Any~~A trade name;
  - (4) Any other fictitious partnership name;
  - (5) ~~Any~~A limited partnership name;
  - (6) ~~Any~~A limited liability partnership name;
  - (7) ~~Any~~A limited liability limited partnership name; or
  - (8) ~~Any~~A trademark or service mark.

4. The secretary of state shall determine whether a fictitious partnership name is distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.

**SECTION 12. AMENDMENT.** Section 45-13-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**45-13-04.1. Partnership name.**

1. A partnership name filed in a statement under section 45-13-05:
  - a. Must be in the English language or in any other language expressed in English letters or characters;
  - b. May contain the name of ~~any~~a partner;
  - c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or ~~any~~an abbreviation of these words;
  - d. May not contain a word or phrase that indicates or implies that the partnership:

- (1) Is organized for a purpose other than a lawful purpose for which a partnership may be organized under this chapter; or
  - (2) May not be formed under this chapter; and
- e. ~~May not be the same as, or deceptively similar to~~ Must be distinguishable in the records of the secretary of state from:
- (1) The name, whether foreign and authorized to do business in this state or domestic, unless filed with the statement is a record which complies with subsection 3 of:
    - (a) Another partnership;
    - (b) A limited liability company;
    - (c) A corporation;
    - (d) A limited partnership;
    - (e) A limited liability partnership; or
    - (f) A limited liability limited partnership;
  - (2) A name, the right of which is, at the time of filing, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a partnership name is ~~deceptively similar to~~ distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
3. If the secretary of state determines a partnership name is ~~deceptively similar to~~ indistinguishable in the secretary of state's records from another name for purposes of this chapter, ~~then~~ the partnership name may not be used unless there is filed with the statement:
- a. The written consent of the holder of the rights to the name to which the proposed name is determined to be ~~deceptively similar~~ indistinguishable; or
  - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
4. This section does not affect the right of a partnership existing on July 1, 1999, or a foreign partnership authorized to do business in this state on July 1, 1999, to continue the use of the foreign partnership's name.
5. This section and section 45-13-04.2 do not:

- a. Abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or any other rights to the exclusive use of a name or symbol.
  - b. Derogate the common law or any principle of equity.
6. A partnership that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations if the other organization whose name is sought to be used:
- a. Is formed under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-32.1-12, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25.
7. The use of a name by a partnership in violation of this section does not affect or vitiate the partnership existence of the partnership. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the partnership from doing business under a name assumed in violation of this section, although a statement may have been filed with the secretary of state.
8. If the period of existence of the partnership is expired or a statement of a partnership filed under section 45-13-05 is expired, then the partnership may reacquire the right to use that name by refiling a statement pursuant to section 45-13-05, unless the name was adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A partnership that cannot reacquire the use of its partnership name shall adopt a new partnership name that complies with this section.

**SECTION 13. AMENDMENT.** Section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-04. Limited liability partnership - Name.**

1. The name of a limited liability partnership:
  - a. Must be expressed in letters or characters in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain the words "limited liability partnership" or the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations may be

- used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state.
- c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase ~~that indicates~~indicating or ~~that implies~~implying the limited liability partnership:
    - (1) Is formed for a purpose other than:
      - (a) A lawful purpose for which a limited liability partnership may be formed under this chapter; or
      - (b) For a purpose stated in its registration; or
    - (2) May not be formed under this chapter.
  - e. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the registration a record that complies with subsection 3, of:
      - (a) Another limited liability partnership;
      - (b) A corporation;
      - (c) A limited liability company;
      - (d) A limited partnership; or
      - (e) A limited liability limited partnership;
    - (2) A name, the right to which is at the time of registration reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - (3) A fictitious name registered in the manner provided in chapter 45-11;
    - (4) A trade name registered in the manner provided in chapter 47-25; or
    - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
  - f. Need not be filed as provided in chapter 45-11 except if transacting business under a name other than the name as registered under this chapter.
2. The secretary of state shall determine whether a name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.

3. If the secretary of state determines that a limited liability partnership name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from another name for purposes of this chapter, the limited liability partnership name may not be used unless there is filed with the registration:
  - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be ~~deceptively similar~~indistinguishable; or
  - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
4. This section and section 45-22-05 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other rights to the exclusive use of names or symbols.
  - b. Derogate the common law or principles of equity.
5. A limited liability partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought:
  - a. Is incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate the limited liability partnership's status as a limited liability partnership. However, a court of this state may, upon application of the state or of an interested or affected person, enjoin the limited liability partnership from doing business under a name assumed in violation of this

section, even though the limited liability partnership's registration may have been filed with the secretary of state.

7. A limited liability partnership whose registration has expired or whose registration has been forfeited as provided in section 45-22-21.1 may reacquire the right to use that name by refiling a registration as provided in section 45-22-03 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A limited liability partnership that cannot reacquire the use of its limited liability partnership name shall adopt a new limited liability partnership name that complies with this section:
  - a. By refiling a registration as provided in section 45-22-03;
  - b. By amending its registration as provided in section 45-22-03; or
  - c. By reinstating the limited liability partnership pursuant to section 45-22-21.1, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3.
8. With respect to foreign limited liability partnerships:
  - a. A foreign limited liability partnership may register under any name that would be available to a domestic limited liability partnership, regardless of whether the name is the same under which the foreign limited liability partnership is authorized in the jurisdiction of original registration.
  - b. A fictitious name certificate must be filed as provided in chapter 45-11 only if registering under a name other than the name as authorized in the jurisdiction of original registration.
9. A limited liability partnership that files its registration with an effective date later than the date of filing as provided in subsection 9 of section 45-22-03 shall maintain the right to the name until the effective date.

**SECTION 14. AMENDMENT.** Section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-03. Limited liability limited partnership name.**

1. The name of each limited liability limited partnership as set forth in the limited liability limited partnership's certificate of limited liability limited partnership:
  - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain without abbreviation the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may be used interchangeably for any purpose authorized by this chapter including real estate matters, contracts, and filings with the secretary of state.

- c. May contain the name of anya partner.
- d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", or anya abbreviation of these words.
- e. May not contain a word or phrase ~~that indicates~~indicating or ~~that implies~~that implying the limited liability limited partnership:
  - (1) Is organized for a purpose other than:
    - (a) A lawful purpose for which a limited liability limited partnership may be organized under this chapter; or
    - (b) For a purpose stated in its certificate of limited liability limited partnership; or
  - (2) May not be organized under this chapter.
- f. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate a record in compliance with subsection 3, of:
    - (a) Another limited liability limited partnership;
    - (b) A limited partnership;
    - (c) A corporation;
    - (d) A limited liability company; or
    - (e) A limited liability partnership;
  - (2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11;
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
- 2. The secretary of state shall determine whether a limited liability limited partnership name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
- 3. If the secretary of state determines a limited liability limited partnership name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from another name for purposes of this chapter, the limited liability limited partnership name may not be used unless there is filed with the certificate:

- a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be ~~deceptively similar~~ indistinguishable; or
  - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
4. This section does not:
- a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other rights to the exclusive use of any name or symbol.
  - b. This section does not derogate the common law or the principles of equity.
5. A limited liability limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may include in the limited liability limited partnership's name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:
- a. Is incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
6. The use of a name of a limited liability limited partnership in violation of this section does not affect or vitiate a limited liability limited partnership's existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability limited partnership from doing business under a name assumed in violation of this section, although a certificate of limited liability limited partnership may have been filed with the secretary of state.
7. A limited liability limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section



45-10.2-108 or 45-10.2-108.1 may reacquire the right to use that name by refiling a certificate of limited liability limited partnership pursuant to section 45-23-04, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3. A limited liability limited partnership that cannot reacquire the use of its limited liability limited partnership name shall adopt a new limited liability limited partnership name that complies with the provisions of this section:

- a. By refiling the certificate of limited liability limited partnership pursuant to section 45-23-04;
  - b. By amending pursuant to section 45-10.2-24; or
  - c. By reinstating pursuant to section 45-10.2-108, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3.
8. Subject to section 45-23-07, this section applies to ~~any~~ foreign limited liability limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
  9. A limited liability limited partnership that files its certificate of limited liability limited partnership with an effective date later than the date of filing as provided in subsection 1 of section 45-23-05 shall maintain the right to the name until the effective date.

**SECTION 15. AMENDMENT.** Subsection 13 of section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

13. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

**SECTION 16. AMENDMENT.** Section 47-25-03 of the North Dakota Century Code is amended and reenacted as follows:

**47-25-03. Trade name - Nature.**

1. A trade name:
  4. a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  2. b. May not contain the word "company", "corporation", "incorporated", "limited", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or ~~any~~ abbreviation of any of those words unless the owner of the trade name is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership as indicated by the words used in the name.
  3. ~~May not be the same as or deceptively similar to any~~

- c. Must be distinguishable in the records of the secretary of state from a name reserved or registered with the secretary of state unless there is filed with the registration a written consent from the holder of the similar indistinguishable name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:
- a. Any
    - (1) A corporate name;
  - b. Any
    - (2) A limited liability company name;
  - e. (3) Any other trade name;
  - d. Any
    - (4) A fictitious partnership name;
  - e. Any
    - (5) A limited partnership name;
  - f. Any
    - (6) A limited liability partnership name;
  - g. Any
    - (7) A limited liability limited partnership name; or
  - h. Any
    - (8) A trademark or service mark.
4. d. That is a franchise must be accompanied by a written consent from the franchiser.
2. The secretary of state shall determine whether a trade name is distinguishable in the secretary of state's records from another trade name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.

**SECTION 17. CONTINGENT EFFECTIVE DATE.** This Act becomes effective upon receipt by the legislative council of the certification by the secretary of state attesting that all necessary administrative rules and information technology components and systems are ready for implementation of this Act.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 94

### HOUSE BILL NO. 1045

(Representative Toman)

AN ACT to create and enact subsection 16 to section 9-16-01, section 9-16-19, a new section to chapter 10-19.1, and section 10-32.1-102 of the North Dakota Century Code, relating to electronic transaction definitions, blockchain technology and smart contracts, number of shareholders, and series limited liability companies; to amend and reenact sections 9-16-02, 10-06.1-17, 10-19.1-01, and 10-19.1-01.2, subsection 6 of section 10-19.1-66, subsection 1 of section 10-19.1-73.3, sections 10-19.1-76.3 and 10-19.1-81, subsections 1, 2, and 11 of section 10-19.1-84, subsection 1 of section 10-19.1-110, subsection 2 of section 10-19.1-146, and subsection 2 of section 10-35-28 of the North Dakota Century Code, relating to electronic transactions, filing of an annual report by corporations engaged in farming or ranching, Business Corporation Act definitions, knowledge and notice, share certificates, corporate voting list and voting trusts, acceptance of shareholder act by the corporation, corporate records, corporate dissolution procedure, and the filing of an annual report by a publicly traded corporation; and to provide an effective date.

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

**SECTION 1.** Subsection 16 of section 9-16-01 of the North Dakota Century Code is created and enacted as follows:

16. "Writing" or "written" includes blockchain technology as defined in section 9-16-19.

**SECTION 2. AMENDMENT.** Section 9-16-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **9-16-02. Scope.**

1. Except as otherwise provided in subsection 2 or 3, this chapter applies to electronic records and electronic signatures relating to a transaction.
2. ~~This~~Except as provided in subsection 3, this chapter 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 section 41-01-20 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. Section 9-16-19 applies only to title 10 and transactions governed by chapters 41-02, 41-02.1, and 41-07.

4. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection 2 or 3, to the extent it is governed by a law other than those specified in subsection 2 or 3.
- 4.5. A transaction subject to this chapter is also subject to other applicable substantive law.

**SECTION 3.** Section 9-16-19 of the North Dakota Century Code is created and enacted as follows:

**9-16-19. Signatures and records secured through blockchain technology - Smart contracts - Ownership of information - Definitions.**

1. A signature secured through blockchain technology is considered to be in an electronic form and to be an electronic signature.
2. A record or contract secured through blockchain technology is considered to be in an electronic form and to be an electronic record.
3. Smart contracts may exist in commerce. A contract relating to a transaction may not be denied legal effect, validity, or enforceability solely because the contract contains a smart contract term.
4. Notwithstanding title 10 or chapters 41-02, 41-02.1, and 41-07, a person in or affecting interstate or foreign commerce using blockchain technology to secure information the person owns or has the right to use retains the same rights of ownership or use with respect to that information as before the person secured the information using blockchain technology. This subsection does not apply to the use of blockchain technology to secure information in connection with a transaction to the extent the terms of the transaction expressly provide for the transfer of rights of ownership or use with respect to that information.
5. As used in this subsection:
  - a. "Blockchain technology" means distributed ledger technology that uses a distributed, decentralized, shared, and replicated ledger, which may be public or private, permissioned or permissionless, or driven by tokenized crypto economics or tokenless and which is protected with cryptography, is immutable, and auditable and provides an uncensored truth.
  - b. "Smart contract" means an event-driven program, with state, that runs on a distributed, decentralized, shared, and replicated ledger and which can take custody over and instruct transfer of assets on that ledger.

<sup>25</sup> **SECTION 4. AMENDMENT.** Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-17. Annual report - Contents - Filing requirements.**

Before April sixteenth of each year, every, everya corporation engaged in farming or ranching after June 30, 1981, and everya limited liability company engaged in farming or ranching shall file with the secretary of state an annual report signed as provided in

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<sup>25</sup> Section 10-06.1-17 was also amended by section 1 of Senate Bill No. 2326, chapter 92.

subsection 5458 of section 10-19.1-01 if a corporation and subsection 47 of section 10-32.1-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement. An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.
3. With respect to each corporation:
  - a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
4. With respect to each shareholder or member:
  - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
  - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
  - c. The relationship of each;
  - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
  - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
5. With respect to management:
  - a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
  - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is

leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].

7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.
8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
9. A corporation engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-19.1, except that the penalties must be calculated from the date of the report required by this section.
10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-32.1, except that the penalties must be calculated from the date of the report required by this section.

**SECTION 5. AMENDMENT.** Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the foreign or domestic organization acquiring the ownership interests of another foreign or domestic organization participating in an exchange.
3. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location, which may not be only a post-office box; and
  - b. In any other case, the mailing address, including the zip code.
4. "Articles" means:
  - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, articles of conversion, and articles of dissolution.

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- b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the state of incorporation of the foreign corporation.
  5. "Authenticated electronic communication" means:
    - a. That the electronic communication is delivered:
      - (1) To the principal place of business of the corporation; or
      - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
    - b. That the electronic communication ~~sets forth~~provides information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
  6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
  7. "Board" or "board of directors" means the board of directors of a corporation.
  8. "Board member" means:
    - a. An individual serving on the board of directors in the case of a corporation; and
    - b. An individual serving on the board of governors in the case of a limited liability company.
  9. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.
  10. "Class", when used with reference to ownership interests, means a category of ownership interests that differs in designation or one or more rights or preferences from another category of ownership interests of the organization.
  11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
  12. "Constituent corporation" means a corporation or a foreign corporation that:
    - a. In a merger, is either the surviving corporation or a foreign or domestic corporation that is merged into the surviving organization; or
    - b. In an exchange, is either the acquiring corporation or a foreign or domestic corporation whose shares are acquired by the acquiring organization.
  13. "Constituent organization" means an organization that:
    - a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
    - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

14. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
15. "Converting organization" means an organization that converts into another organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
16. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
17. "Data address" means the string of alphanumeric characters on a distributed or other electronic network or database which may be accessed only by knowledge or possession of a private key to facilitate or record transactions on the distributed or other electronic network or database.
18. "Director" means a member of the board.
- ~~18-19.~~ "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares, and may be in the form of a dividend, an interim distribution, or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
- ~~19-20.~~ "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.
- ~~20-21.~~ "Domestic organization" means an organization created under the laws of this state.
- ~~21-22.~~ "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- ~~22-23.~~ "Electronic communication" means any form of communication, not directly involving the physical transmission of paper, including a process of communication which uses a distributed or other electronic network or database, or that:
  - a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. May be directly reproduced in paper form by the recipient through an automated process.
- ~~23-24.~~ "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- ~~24-25.~~ "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
- ~~25-26.~~ "Filed with the secretary of state" means, except as otherwise permitted by law or rule:



- a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
- b. That the secretary of state did then:
  - (1) Record the actual date on which the record was filed, and if different the effective date of filing; and
  - (2) Record the record in the office of the secretary of state.

26-27. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.

27-28. "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.1.

28-29. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

29-30. "Good faith" means honesty in fact in the conduct of an act or transaction.

30-31. "Governing body" means for an organization that is:

- a. A corporation, its board of directors;
- b. A limited liability company, its board of governors; or
- c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.

31-32. "Governing statute" of an organization means:

- a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
  - (1) If a corporation, then this chapter;
  - (2) If a limited liability company, then chapter 10-32.1;
  - (3) If a general partnership, then chapters 45-13 through 45-21;
  - (4) If a limited partnership, then chapter 45-10.2;
  - (5) If a limited liability partnership, then chapter 45-22; and
  - (6) If a limited liability limited partnership, then chapter 45-23; and

- b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.

32-33. "Identity" means the name of a shareholder or the data address for which the shareholder has knowledge or possession of the private key uniquely associated with the data address.

34. "Intentionally" means that the person referred to has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:

- a. If the person intentionally does the act or causes the result prohibited by the statute; or
- b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

33-35. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

34-36. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by chapter 10-32.1.

35-37. "Network signature" means a string of alphanumeric characters which when broadcasted by a shareholder to the data address's corresponding distributed or other electronic network or database provides reasonable assurances to a corporation that the shareholder has knowledge or possession of the private key uniquely associated with the data address.

38. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.

36-39. "Notice":

- a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation:
  - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or
  - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
    - (b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.

- (c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
- [1] The posting; or
  - [2] The giving of the separate notice.
- (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
- b. Is given by a publicly held corporation to a shareholder if:
- (1) If the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, as amended, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations;
  - (2) When an electronic transmission has been made to a data address provided by the shareholder; or
  - (3) When electronically transmitted to the shareholder in a manner by which the shareholder has consented, when directed to the shareholder.
- c. Is given, in all other cases:
- (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
  - (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable to the person at an address designated by the person or at the last-known address of the person;
  - (3) When handed to the person;
  - (4) When left at the office of the person with a clerk or other person in charge of the office or:
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there;
  - (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

- (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
  - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
  - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
    - [1] The posting; or
    - [2] The giving of the separate notice.
  - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or
  - (6) When the method is fair and reasonable when all of the circumstances are considered.
- d. Is given by mail when deposited in the United States mail with sufficient postage affixed.
  - e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.
  - f. Is deemed received when it is given.

37-40. "Officer" means an individual who is eighteen years of age or more who is:

- a. Elected, appointed, or otherwise designated as the president, the treasurer, or any other officer pursuant to section 10-19.1-52; or
- b. Deemed elected as an officer pursuant to section 10-19.1-56.

38-41. "Organization":

- a. Means, whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but
- b. Excludes:
  - (1) ~~Any~~A nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; and
  - (2) ~~Any~~A nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.

39-42. "Originating records" means for an organization that is:

- a. A corporation, its articles of incorporation;
- b. A limited liability company, its articles of organization;
- c. A limited partnership, its certificate of limited partnership;
- d. A limited liability partnership, its registration; or
- e. A limited liability limited partnership, its certificate of limited liability limited partnership.

40-43. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

41-44. "Owners" means the holders of ownership interests in an organization.

42-45. "Ownership interests" means for a domestic or foreign organization that is:

- a. A corporation, its shares;
- b. A limited liability company, its membership interests;
- c. A limited partnership, its partnership interests;
- d. A general partnership, its partnership interests;
- e. A limited liability partnership, its partnership interests;
- f. A limited liability limited partnership, its partnership interests; or
- g. Any other organization, its governance or transferable interests.

43-46. "Parent" of a specified organization means an organization that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the ownership interests entitled to vote for directors or other members of the governing body of the specified organization.

44-47. "Principal executive office" means:

- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of a corporation has an office; or
- b. If the corporation has no elected or appointed president, then the registered office of the corporation.

45-48. "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78L], or is subject to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)].

46-49. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

47-50. "Record of shareholders" means a record administered by or on behalf of a corporation and which records the identity of all the corporation's shareholders and the number and class of shares held by each shareholder in accordance

with section 10-19.1-84. The term includes a record of all issuances and transfers of shares of a corporation at the discretion of the corporation;

51. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.
- 48-52. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
- 49-53. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
- 50-54. "Security" has the meaning given in section 10-04-02.
- 51-55. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
- 52-56. "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.
- 53-57. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation or the owner of a private key uniquely associated with a data address that facilitates or records the sending and receiving of shares.
- 54-58. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, by network signature, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:

(1) The record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and

(2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

55-59. "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.

56-60. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

57-61. "Surviving corporation" means the domestic or foreign corporation resulting from a merger which:

- a. May pre-exist the merger; or
- b. May be created by the merger.

58-62. "Surviving organization" means the organization resulting from a merger which:

- a. May pre-exist the merger; or
- b. May be created by the merger.

59-63. "Vote" includes authorization by written action.

60-64. "Written action" means:

- a. A written record signed by all of the persons required to take the action; or
- b. The counterparts of a written record signed by any of the persons taking the action described.

(1) Each counterpart constitutes the action of the person signing; and

(2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

**SECTION 6. AMENDMENT.** Section 10-19.1-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-01.2. Knowledge and notice.**

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:

- a. Knows of the fact;
  - b. Has received notice of the fact as provided in subsection 3639 of section 10-19.1-01;
  - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
  - d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:
    - a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve;
    - b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution;
    - c. The conversion of a corporation, ninety days after the effective date of the filed articles of conversion; or
    - d. The merger of a corporation, ninety days after the effective date of the filed articles of merger.
  4. A person notifies or gives a notification to another person by taking the steps provided in subsection 3639 of section 10-19.1-01, whether or not the other person learns of it.
  5. A person receives a notification as provided in subsection 3639 of section 10-19.1-01.
  6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 3639 of section 10-19.1-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
    - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
    - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
  7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the



corporation by a shareholder who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.

8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.
9. With respect to notice given by a form of electronic communication:
  - a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
  - b. An affidavit of an officer or director or an authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

**SECTION 7. AMENDMENT.** Subsection 6 of section 10-19.1-66 of the North Dakota Century Code is amended and reenacted as follows:

6. Unless uncertificated shares are prohibited by the articles or bylaws, a corporation may provide that some or all of any or all classes and series of the corporation's shares will be uncertificated shares.
  - a. The action by the corporation provided in this subsection does not apply to shares represented by a certificate until the certificate is surrendered to the corporation.
  - b. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall ~~send~~give to the new shareholder the information required by this section to be stated on certificates.
  - c. The information required under this section is not required to be ~~sent~~given to the new shareholder by a publicly held corporation that adopted a system of issuance, recordation, and transfer of the corporation's shares by electronic or other means not involving the issuance of certificates if the system complies with federal law.
  - d. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

**SECTION 8. AMENDMENT.** Subsection 1 of section 10-19.1-73.3 of the North Dakota Century Code is amended and reenacted as follows:

1. After fixing a record date for notice of and voting at a meeting, a corporation shall prepare an alphabetical or numerical list of the ~~names~~identities of all its shareholders entitled to notice and to vote. The list must show ~~the address and~~

- a. The number of shares each shareholder is entitled to vote at the meeting;
- b. Each shareholder's physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; and
- c. Each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.

**SECTION 9.** A new section to chapter 10-19.1 of the North Dakota Century Code is created and enacted as follows:

**Number of shareholders.**

1. The following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:
  - a. Three or fewer co-owners;
  - b. A corporation, partnership, trust, estate, or other entity;
  - c. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account; or
  - d. One data address.
2. Shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe the names represent the same person.

**SECTION 10. AMENDMENT.** Section 10-19.1-76.3 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-76.3. Acceptance of shareholder act by the corporation.**

1. If the name or network signature signed on a vote, consent, waiver, or proxy appointment corresponds to the record name or data address of a shareholder, the corporation if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.
2. Unless the articles or bylaws provide otherwise, if the name or network signature signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name or data address of a shareholder, the corporation if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:
  - a. The shareholder is an organization and the name or network signature signed purports to be that of an officer, manager, or agent of the organization;
  - b. The name or network signature signed purports to be that of an administrator, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

- c. The name or network signature signed purports to be that of a receiver or trustee in bankruptcy of the shareholder, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
  - d. The name or network signature signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder, and if, the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
  - e. Two or more persons hold the shares as cotenants or fiduciaries and the name or network signature signed purports to be the name or data address of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.
3. The corporation may reject a vote, consent, waiver, or proxy appointment if the officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis to doubt the validity of the signature on it or the authority of the signatory to sign for the shareholder.
  4. The corporation or its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the shareholder for the consequences of the acceptance or rejection.
  5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

**SECTION 11. AMENDMENT.** Section 10-19.1-81 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-81. Voting trusts.**

1. Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding ten years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A signed original of the agreement must be filed with the corporation.
2. When a voting trust agreement is signed, the trustee shall prepare a list of the identities of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust. The list must include each shareholder's:
  - a. Physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; or
  - b. Authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.

3. Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in subsection 5 of section 10-19.1-73.2.

**SECTION 12. AMENDMENT.** Subsection 1 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation shall keep, at the corporation's principal executive office or at another place or places within the United States determined by the board, a share register not more than one year old, containing the ~~name and~~ addresses of each shareholder ~~and, in alphabetical or numerical order by class of shares showing~~ the number and classes of shares held by each shareholder.
  - a. The list must include each shareholder's:
    - (1) Physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; or
    - (2) Authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.
  - b. A record of shareholders may show both the shareholder's name and data address.
  - c. A corporation shall also keep, at the corporation's principal executive office or at another place or places within the United States determined by the board, a record of the dates on which certificated or uncertificated shares were issued.

**SECTION 13. AMENDMENT.** Subsection 2 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall keep, at its principal executive office or at another place or places within the United States determined by the board, and, if its principal executive office or any such other place is outside of this state, shall make available at its registered office or at its principal executive office within this state within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subsection 4 or 5, originals or copies of:
  - a. Records of all proceedings of shareholders for the last three years;
  - b. Records of all proceedings of the board for the last three years;
  - c. Its articles and all amendments currently in effect;
  - d. Its bylaws and all amendments currently in effect;
  - e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
  - f. Reports made to shareholders generally within the last three years;

- g. A statement of the names, identities and usual business addresses of its directors and principal officers;
- h. Voting trust agreements and beneficial interests owner's list described in section 10-19.1-81;
- i. Shareholder control agreements described in section 10-19.1-83; and
- j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection 8 of section 10-19.1-10.

**SECTION 14. AMENDMENT.** Subsection 11 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

11. The records maintained by a corporation, including its share register, financial records, and minute books, may utilize any information storage technique~~be retained on, or by means of, or be in the form of any information storage device or method,~~ including, ~~for example,~~ punched holes, printed or magnetized spots, or microimages, ~~even though that makes them illegible visually, if for any one or more distributed or other electronic networks or databases provided the records are retained in written form or in another form that can be converted accurately and into written form~~ within a reasonable time, ~~into a form that~~ is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert ~~any of the records referred to in subsection 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subsection 10. A copy of the conversion is admissible in evidence, and must be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.~~

**SECTION 15. AMENDMENT.** Subsection 1 of section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

1. If notice to creditors and claimants is given, it must be given by:
  - a. Publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and
  - b. Giving written notice to known creditors and claimants pursuant to subsection ~~3639~~ of section 10-19.1-01.

<sup>26</sup> **SECTION 16. AMENDMENT.** Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection ~~5458~~ of section 10-19.1-01. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf

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<sup>26</sup> Section 10-19.1-146 was also amended by section 5 of Senate Bill No. 2326, chapter 92.

of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

**SECTION 17.** Section 10-32.1-102 of the North Dakota Century Code is created and enacted as follows:

**10-32.1-102. Series of members, managers, transferable interests or assets - General powers of series - Governing authority - Distributions - Termination of series.**

1. An operating agreement may establish or provide for the establishment of a designated series of members, managers, transferable interests, or assets that:
  - a. Has separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations; or
  - b. Has a separate business purpose or investment objective.
2. A series established in accordance with subsection 1 may carry on any business, purpose, or activity, whether or not for profit, which is not prohibited by this chapter.
3. Subject to subsection 4, if an operating agreement establishes or provides for the establishment of a particular series:
  - a. The debts, obligations, or other liabilities of the particular series, whether arising in contract, tort, or otherwise, are enforceable against the assets of the series only and not against:
    - (1) The assets of the limited liability company generally or any other series thereof; or
    - (2) A member of the limited liability company.
  - b. The debts, obligations, or other liabilities of the limited liability company generally or any other series thereof, whether arising in contract, tort, or otherwise, are not enforceable against the assets of the particular series.
4. The limitations on liabilities in subsection 3 apply if:
  - a. The records for the particular series accounting for the assets of the series are separately maintained from the records accounting for the assets of the limited liability company or any other series thereof. Records that reasonably identify the assets of a particular series, including by specific listing, category, type, quantity, computational or allocational formula or procedure such as a percentage or share of assets, or by any other method in which the identity of the assets is objectively determinable, is deemed to account for the assets of the particular series separately from the assets of the limited liability company or any other series thereof.
  - b. The operating agreement specifically provides for the limitations on liabilities; or

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- c. Notice of the limitations on liabilities of the particular series is included in the articles of organization. Notice is sufficient whether or not the limited liability company has established or referenced any particular series in the notice.
  5. This section, an operating agreement, or articles of organization may not restrict:
    - a. A series or limited liability company on behalf of a series from agreeing in the operating agreement or otherwise that any debt, obligation, or other liability of the limited liability company generally or any other series thereof is enforceable against the assets of the series;
    - b. A limited liability company from agreeing in the operating agreement or otherwise that any debt, obligation, or other liability of a series is enforceable against the assets of the limited liability company generally; or
    - c. Notwithstanding section 10-32.1-26, a member or manager from agreeing in the operating agreement or otherwise to be personally liable for any debt, obligation, or other liability of a series.
  6. A series established under this section may, in its own name, contract, hold title to assets including real, personal and intangible property, grant liens and security interests, and sue or be sued. A series may:
    - a. Have separate rights, powers, or duties with respect to specified property or obligation of the limited liability company or profit and loss associated with any specified property or obligation;
    - b. Carry on a lawful purpose regardless of whether for profit, except for the purpose of acting as a financial institution or acting as an insurer; or
    - c. Hold assets directly or indirectly, including in the name of the series or the name of the limited liability company.
  7. An operating agreement that establishes or provides for the establishment of a series may:
    - a. Provide for classes or groups of members or managers of the series having the relative rights, powers, and duties specified in the operating agreement;
    - b. Provide for and specify the future creation of additional classes or groups of members or managers of the series having the relative rights, powers, and duties as may be established, including rights, powers, and duties senior to existing classes and groups of members or managers of the series;
    - c. Provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of a member, manager, class, or group of members or managers of the series;
    - d. Provide that a member, class, or group of members of a series do not have voting rights; and

- e. Grant to all or certain identified members, managers, class, or group of members or managers of the series the right to vote on a matter separately or with all or any class or group of members or managers of the series. Voting by members or managers may be on a per capita, number, financial interest, class, group, or other basis.
8. The management of a series is vested as follows:
- a. In the members of the series pursuant to subsection 2 of section 10-32.1-39. A member shall cease to be a member of a series upon the divestment of all the member's transferable interests of the series. The fact a person ceases to be a member of a particular series must not by itself cause the person to cease to be a member of the limited liability company or any other series thereof or cause the termination of the series, regardless of whether the person was the last remaining member of the series; or
- b. If the operating agreement provides for the management of the series in whole or in part by a manager, the management must be vested in one or more managers who must be chosen as provided in the operating agreement and who must hold the offices and have the responsibilities as specified in the agreement. A manager ceases to be a manager of a series as provided in an operating agreement and subject to subdivision e of subsection 3 of section 10-32.1-39. The fact a person ceases to be a manager of a particular series must not by itself cause the person to cease to be a manager of the limited liability company or any other series thereof.
9. Notwithstanding section 10-32.1-30 and subject to subsections 10 and 12, if a member of a series becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution. An operating agreement may provide for the establishment of a record date for allocations and distributions associated with a series.
10. Notwithstanding subsection 1 of section 10-32.1-31, a limited liability company may make a distribution with respect to a series established under this section unless the total assets of the series after the distribution would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon winding up and termination of members whose preferential rights are superior to those of the persons receiving the distribution. A member that receives a distribution knowing the distribution was made in violation of this subsection is personally liable to the series for the amount of the distribution.
- a. This subsection does not affect an obligation or liability of a member under an agreement or other applicable law for the amount of a distribution, except an action under this subsection must be subject to subsection 5 of section 10-32.1-32.
- b. For purposes of this subsection, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.



11. Subject to section 10-32.1-51, a series established under this section may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of the series does not affect the limitations on liabilities of the series as provided in subsection 3. A series is terminated and its affairs must be wound up upon the occurrence of any of the following:
  - a. The dissolution of the limited liability company under section 10-32.1-51;
  - b. The time or happening of events specified in the operating agreement;
  - c. The vote or consent of members of the series who own more than two-thirds of the interests in the profits of the series; or
  - d. On application by a member or manager of the series, the entry of a court order terminating the series on the grounds the series is not reasonably practicable to carry on the purposes of the series in conformity with the operating agreement.
12. A person winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and the series, take any action with respect to the series as authorized by section 10-32.1-51. The person shall provide for the claims and obligations of the series and distribute the assets of the series as provided in section 10-32.1-54. Any action taken in accordance with this subsection does not affect the liability of members and does not impose liability on a liquidating trustee appointed in accordance with this subsection. Notwithstanding section 10-32.1-51, the following persons may wind up the affairs of a series:
  - a. A manager of the series who has not wrongfully terminated the series;
  - b. If the series has no manager who qualifies under subdivision a, the members of the series or a person approved by the members;
  - c. The members who own more than fifty percent of the interests in the profits of the series; or
  - d. On application of a member or manager of the series or a personal representative or assignee of the member or manager, and upon cause shown, a court or a liquidating trustee appointed by the court.
13. A foreign limited liability company doing business in this state and governed by an operating agreement that establishes or provides for the establishment of a designated series of members, managers, transferable interests, or assets shall state the following on its certificate of authority:
  - a. That the operating agreement of the foreign limited liability company establishes or provides for the establishment of series having separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations;
  - b. If any debt, obligation, or other liability of any particular series, whether arising in contract, tort, or otherwise, is enforceable against the assets of

the particular series only and not against the assets of the foreign limited liability company generally or any other series thereof; and

c. If any debt, obligation, or other liability of the foreign limited liability company generally or any other series thereof, whether arising in contract, tort, or otherwise, is enforceable against the assets of the particular series.

14. The secretary of state may adopt rules reasonable and necessary to address requirements related to the secretary of state for registration and continuing existence of the series limited liability companies established under this section.

**SECTION 18. AMENDMENT.** Subsection 2 of section 10-35-28 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 5458 of section 10-19.1-01, the articles or the bylaws, or by a resolution approved by the affirmative vote of the required proportion or number of the directors. If the publicly traded corporation is in the hands of a receiver or trustee, it must be signed on behalf of the publicly traded corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

**SECTION 19. EFFECTIVE DATE.** Section 17 of this Act becomes effective on July 1, 2020.

Approved April 24, 2019

Filed April 24, 2019

# COUNTIES

## CHAPTER 95

### SENATE BILL NO. 2192

(Senators Bekkedahl, Meyer, Wardner)  
(Representatives Lefor, Schreiber-Beck, Zubke)

AN ACT to create and enact chapter 11-09.2 of the North Dakota Century Code, relating to county lodging and restaurant tax; to amend and reenact subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section 57-39.2-02.1, and subsection 22 of section 57-39.2-04 of the North Dakota Century Code, relating to references to tourist court accommodations; and to provide an effective date.

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

**SECTION 1.** Chapter 11-09.2 of the North Dakota Century Code is created and enacted as follows:

##### **11-09.2-01. County lodging tax - Imposition - Amount - Disposition.**

The board of county commissioners of any county, by ordinance, may impose a county tax, not to exceed two percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or other accommodations within the county for periods of fewer than thirty consecutive calendar days or one month. The tax imposed by this section must be in addition to the state sales tax on rental accommodations provided in chapter 57-39.2. A county may not impose a county lodging tax under this section on the gross receipts of retailers located within the boundaries of a city within that county if the city has imposed a city lodging tax, or subsequently enacts and imposes a city lodging tax, under section 40-57.3-01. A county that imposes the tax in this section shall deposit all proceeds in the county visitors' promotion fund. Moneys deposited in the county visitors' promotion fund must be spent only as provided in this chapter. This chapter applies to all counties and does not limit the authority of a home rule county to levy any taxes authorized by other provisions of law.

##### **11-09.2-02. County lodging and restaurant tax - Imposition - Amount - Disposition.**

In addition to the tax under section 11-09.2-01, the board of county commissioners of any county, by ordinance, may impose a county tax, at a rate not to exceed one percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or other accommodations within the county for periods of fewer than thirty consecutive calendar days or one month and upon the gross receipts of a restaurant from any sales of prepared food or beverages, not including alcoholic beverages for consumption off the premises where purchased, which are subject to state sales taxes. For purposes of this section, "restaurant" means any place where food is prepared and intended for individual portion service for consumption on or off the premises and "prepared" includes heating prepackaged food. Accommodations, food, and beverages may all, each, or in any combination be subject to the tax under

this section, if all items in any category which are taxable under state law are taxable, except as otherwise provided in this section. The tax imposed under this section is in addition to state sales taxes on rental accommodations and restaurant sales, and county lodging taxes under section 11-09.2-01. A county may not impose a county lodging and restaurant tax under this section on the gross receipts of retailers located within the boundaries of a city within that county if the city has imposed a city lodging and restaurant tax, or subsequently enacts and imposes a city lodging and restaurant tax, under section 40-57.3-01.1, on the gross receipts from the same transaction. A county that imposes the tax under this section shall deposit all proceeds in the county visitors' promotion fund. Moneys deposited in the county visitors' promotion fund may be spent only as provided in this chapter.

#### **11-09.2-03. County visitors' promotion fund - Establishment - Purpose.**

The board of county commissioners of any county that imposes a county tax pursuant to section 11-09.2-01 or 11-09.2-02 shall establish a county visitors' promotion fund. The local destination marketing organization shall serve as an advisory committee to the board of county commissioners in administering the proceeds from the taxes available to the county under this chapter. The moneys in the visitors' promotion fund must be used generally to promote, encourage, and attract visitors to come to the county and use the travel and tourism facilities within the county. The local destination marketing organization shall receive, plan, execute, and review the expenditure of proceeds from the visitors' promotion fund and report its activities annually to the board of county commissioners.

#### **11-09.2-04. Budget - Contracts.**

The board of county commissioners annually shall review the local destination marketing organization budget as proposed by the organization, if any, under which the organization operates. The board of county commissioners, in consultation with the local destination marketing organization, may contract with any person, firm, association, corporation, or limited liability company to carry out the purposes of the county visitors' promotion fund created under section 11-09.2-03.

#### **11-09.2-05. Payment of tax - Collection by tax commissioner - Administrative expenses allowed - Rules.**

The taxes imposed under this chapter are due and payable at the same time the taxpayer is required to file a return under chapter 57-39.2 and must be collected and administered by the tax commissioner in the manner provided in chapter 57-39.2. The taxpayer shall add the taxes imposed under this chapter to the sales, lease, or rental price and shall collect the tax from the consumer. A retailer may not advertise or hold out or state to the public, or to any consumer, directly or indirectly, that the taxes or any part of the taxes imposed under this chapter are assumed, absorbed, or refunded by the taxpayer. The amount the tax commissioner remits monthly to each county as taxes collected for that county's visitors' promotion fund must be reduced by three percent as an administrative fee necessary to defray the cost of collecting the taxes and the expenses incident to collection. The administrative fee must be deposited in the general fund in the state treasury. The tax commissioner shall adopt rules necessary for the administration of this chapter. The penalties and liabilities provided in sections 57-39.2-18 and 57-39.2-18.1 specifically apply to the filing of returns and administration of the taxes imposed under this chapter. The taxes imposed under this chapter are not taxes subject to chapter 57-39.4. The tax commissioner may offset future distributions of a tax imposed and collected under this chapter if a previous overpayment of the tax was distributed to the county. The tax commissioner, after

consulting the appropriate county official, may determine the offset amount and time period for recovery of the overpayment of the tax distribution.

<sup>27</sup> **SECTION 2. AMENDMENT.** Subsections 21, 22, and 23 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service, excluding internet access service, to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or ~~tourist court~~ other accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property, including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.
22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or ~~tourist court~~ other accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, excluding internet access service, or tickets or admissions to places of amusement, entertainment, and athletic events, or magazines or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property

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<sup>27</sup> Section 57-39.2-01 was also amended by section 1 of Senate Bill No. 2165, chapter 495, section 4 of Senate Bill No. 2193, chapter 341, and section 1 of Senate Bill No. 2338, chapter 496.

entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.

23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, excluding internet access service, the furnishing of hotel, motel, or ~~tourist court~~other accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

<sup>28</sup> **SECTION 3. AMENDMENT.** Subdivision e of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- e. The leasing or renting of a hotel or motel room or ~~tourist court~~other accommodations.

<sup>29</sup> **SECTION 4. AMENDMENT.** Subsection 22 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

22. Gross receipts from the leasing or renting of manufactured homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or ~~tourist court~~other accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2019.

Approved March 26, 2019

Filed March 27, 2019

<sup>28</sup> Section 57-39.2-02.1 was also amended by section 5 of Senate Bill No. 2193, chapter 341.

<sup>29</sup> Section 57-39.2-04 was also amended by section 3 of House Bill No. 1131, chapter 296, section 7 of Senate Bill No. 2089, chapter 477, and section 6 of Senate Bill No. 2193, chapter 341.

## **CHAPTER 96**

### **SENATE BILL NO. 2190**

(Senators Kannianen, Cook, Luick)  
(Representatives Fegley, Jones, Longmuir)

AN ACT to repeal section 11-14-11 of the North Dakota Century Code, relating to reports to township clerks.

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

**SECTION 1. REPEAL.** Section 11-14-11 of the North Dakota Century Code is repealed.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 97

### HOUSE BILL NO. 1338

(Representatives Headland, Grueneich, Lefor, Pollert, Satrom, Steiner)  
(Senators Grabinger, Wanzek, Wardner)

AN ACT to amend and reenact sections 11-27-01 and 40-49-01, subsection 1 of section 40-49-12, and section 40-49-23 of the North Dakota Century Code, relating to disposal of property; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 11-27-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-27-01. Board of county commissioners authorized to sell property - Private and public sale.**

The board of county commissioners of any county may dispose of any property, either real or personal, which the county has acquired through purchase, forfeiture, conveyance, or operation of law other than through tax sale proceedings, under this chapter. When the property to be disposed of is property conveyed pursuant to Public Law No. 115-308, or property estimated by the board to be of a value of less than one thousand dollars, it may be sold at private sale upon the proper resolution of the board. In all other cases, the property may be sold only at public sale or as provided under section 11-27-03.1.

**SECTION 2. AMENDMENT.** Section 40-49-01 of the North Dakota Century Code is amended and reenacted as follows:

**40-49-01. Municipalities may acquire real estate for parks or public grounds by gift ~~or~~, devise, or conveyance - Extension of police power.**

A municipality may receive by gift ~~or~~, devise, or conveyance real estate within its corporate limits, or within five miles [8.05 kilometers] thereof, for use as parks or public grounds. Such real estate shall be vested in the municipality upon the conditions imposed by the donors or conveyor, and upon the acceptance of the gift ~~or the, devise, or conveyance~~ by the executive officer and governing body of the municipality, the jurisdiction of the governing body shall be extended over such real estate. The governing body may enact bylaws, rules, and ordinances for the protection and preservation of any real estate acquired as provided in this section and may provide suitable penalties for the violation of any such bylaws, rules, or ordinances. The police powers of the municipality shall be extended at once over any real estate acquired in the manner provided in this section.

**SECTION 3. AMENDMENT.** Subsection 1 of section 40-49-12 of the North Dakota Century Code is amended and reenacted as follows:

1. Acquire by purchase, gift, devise, ~~or, condemnation~~ subject to chapter 32-15-~~condemnation~~, conveyance pursuant to Public Law No. 115-306, or otherwise, land anywhere within this state, or outside this state if located adjacent to a boundary of this state and of the park district, for parks, boulevards, and ways. The board has the sole and exclusive authority to maintain, govern, and



improve the land, and to provide for the erection of structures thereon. Such parks, boulevards, and ways are considered for purposes of taxation and for all other purposes as being within the territorial limits of the municipality. If the board has acquired the legal title in fee to such lands, the board may sell and convey the same. A conveyance must be executed by the president and clerk of the board upon a resolution approved by not less than two-thirds of the members thereof.

**SECTION 4. AMENDMENT.** Section 40-49-23 of the North Dakota Century Code is amended and reenacted as follows:

**40-49-23. Land transfers or abandonment.**

Any municipality or park district may abandon and discontinue as a park or recreational area any land acquired by any municipality or park district for park and recreational purposes under the provisions of section 11-27-08 or property conveyed pursuant to Public Law No. 115-306 and any municipality or park district may sell, convey, or transfer any such lands free from any restrictions as to their use for park and recreational purposes, except as otherwise provided in Public Law No. 115-306.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 19, 2019

Filed March 20, 2019

**CHAPTER 98****HOUSE BILL NO. 1224**

(Representatives Heinert, D. Anderson, Brandenburg, Kading, Meier)  
(Senators Oban, Unruh)

AN ACT to amend and reenact section 11-35-02 of the North Dakota Century Code, relating to zoning of territory adjacent to cities.

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

**SECTION 1. AMENDMENT.** Section 11-35-02 of the North Dakota Century Code is amended and reenacted as follows:

**11-35-02. Zoning of territory adjacent to cities.**

Until the organization of either a regional planning and zoning commission as provided in section 11-35-01 or township zoning board or county zoning commission pursuant to sections 58-03-11 through 58-03-15 and chapter 11-33, respectively, any city ~~which shall determine~~that determines to use zoning regulations ~~shall have~~has exclusive jurisdiction and power to zone over all land over which it has authority to control subdivisions and platting of land as provided in section 40-48-18.

Approved March 26, 2019

Filed March 27, 2019

# CORRECTIONS, PAROLE, AND PROBATION

## CHAPTER 99

### HOUSE BILL NO. 1076

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact section 12-46-13 of the North Dakota Century Code, relating to placement of offenders at the North Dakota youth correctional center.

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

**SECTION 1. AMENDMENT.** Section 12-46-13 of the North Dakota Century Code is amended and reenacted as follows:

#### **12-46-13. Who may be sent to North Dakota youth correctional center - Court procedure.**

Whenever a district court finds an offender under eighteen years of age guilty of a crime and commits the offender to the custody of the department of corrections and rehabilitation, the department may transfer the offender to the North Dakota youth correctional center; however, the department shall first transfer the offender to the North Dakota youth correctional center if the offender is under sixteen years of age. ~~The department may transfer an offender who is between sixteen years of age and eighteen years of age to an adult correctional facility after the department has given the offender an administrative hearing to determine if the interests of the department, the safety of other residents, or the interests of the general public justifies the transfer.~~ The department may allow an offender who is between eighteen years of age and twenty years of age to remain at the North Dakota youth correctional center if the department determines that it is in the best interests of the department and the offender and it is not contrary to safety interests of the other residents or the general public. The department shall transfer an offender who has attained twenty years of age to an adult correctional facility. An offender placed by the department at the North Dakota youth correctional center under this section has all the rights to sentence reduction for good and meritorious conduct and all the pardon and parole rights of an adult committed to the legal and physical custody of the department.

Approved March 6, 2019

Filed March 6, 2019

## CHAPTER 100

### HOUSE BILL NO. 1084

(Judiciary Committee)

(At the request of the Superintendent of Public Instruction)

AN ACT to create and enact a new section to chapter 25-06 and a new section to chapter 25-07 of the North Dakota Century Code, relating to criminal history record checks; and to amend and reenact paragraph 5 of subdivision x of subsection 2 of section 12-60-24 and paragraph 5 of subdivision y of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks.

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

<sup>30</sup> **SECTION 1. AMENDMENT.** Paragraph 5 of subdivision x of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- (5) The superintendent of public instruction in the case of a nonpublic school or a state school with a superintendent appointed by or reporting to the superintendent of public instruction, for employees designated by the nonpublic or state school, provided the nonpublic or state school is responsible for paying the costs associated with obtaining a criminal history record check.

**SECTION 2. AMENDMENT.** Paragraph 5 of subdivision y of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- (5) The superintendent of public instruction in the case of a nonpublic school or a state school with a superintendent appointed by or reporting to the superintendent of public instruction, for a final applicant seeking employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check.

**SECTION 3.** A new section to chapter 25-06 of the North Dakota Century Code is created and enacted as follows:

#### **Criminal history record checks.**

The school for the blind may require any employee, final applicant for employment, or any individual otherwise providing services to the school to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24.

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<sup>30</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1074, chapter 102, section 1 of House Bill No. 1102, chapter 404, section 1 of House Bill No. 1219, chapter 239, section 2 of House Bill No. 1349, chapter 61, and section 1 of House Bill No. 1376, chapter 101.

The school for the blind may assess all costs associated with obtaining a criminal history record check to the individual upon whom the criminal history record check is conducted.

**SECTION 4.** A new section to chapter 25-07 of the North Dakota Century Code is created and enacted as follows:

**Criminal history record checks.**

The school for the deaf may require any employee, final applicant for employment, or any individual otherwise providing services to the school to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. The school for the deaf may assess all costs associated with obtaining a criminal history record check to the individual upon whom the criminal history record check is conducted.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 101

### HOUSE BILL NO. 1376

(Representatives Hatlestad, Lefor, Owens, Richter, Roers Jones, Steiner, Trottier)  
(Senator Cook)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and section 54-17-07.13 of the North Dakota Century Code, relating to criminal history record checks for the housing finance agency.

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

<sup>31</sup> **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The housing finance agency for criminal history checks authorized under section 54-17-07.13.

**SECTION 2.** Section 54-17-07.13 of the North Dakota Century Code is created and enacted as follows:

#### **54-17-07.13. Criminal history record checks.**

The executive director of the housing finance agency may require an applicant for employment to submit to a criminal history record check under section 12-60-24.

Approved March 13, 2019

Filed March 14, 2019

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<sup>31</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1074, chapter 102, section 1 of House Bill No. 1084, chapter 100, section 1 of House Bill No. 1102, chapter 404, section 1 of House Bill No. 1219, chapter 239, and section 2 of House Bill No. 1349, chapter 61.

## CHAPTER 102

### HOUSE BILL NO. 1074

(Judiciary Committee)  
(At the request of the State Treasurer)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and a new section to chapter 54-11 of the North Dakota Century Code, relating to criminal history record checks by the office of state treasurer for individuals with access to federal tax information.

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

<sup>32</sup> **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The office of state treasurer for each individual who has access to federal tax information.

**SECTION 2.** A new section to chapter 54-11 of the North Dakota Century Code is created and enacted as follows:

#### **Criminal history record checks.**

The state treasurer shall require any applicant, employee, or independent contractor who has access to federal tax information to submit to a statewide and nationwide criminal history record check, and subsequent recheck within ten years from the date of the previous criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24.

Approved April 23, 2019

Filed April 24, 2019

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<sup>32</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1084, chapter 100, section 1 of House Bill No. 1102, chapter 404, section 1 of House Bill No. 1219, chapter 239, section 2 of House Bill No. 1349, chapter 61, and section 1 of House Bill No. 1376, chapter 101.

## CHAPTER 103

### HOUSE BILL NO. 1256

(Representatives Roers Jones, Beadle, Becker, Boschee, Brandenburg, Heinert)  
(Senators Burckhard, Luick, Oban, J. Roers)

AN ACT to create and enact chapter 12-60.1 of the North Dakota Century Code, relating to sealing of criminal records; and to amend and reenact subsection 1 of section 12.1-41-14, subsection 4 of section 50-09-32, and subdivision e of subsection 1 of section 62.1-04-03 of the North Dakota Century Code, relating to sealing of criminal records.

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

**SECTION 1.** Chapter 12-60.1 of the North Dakota Century Code is created and enacted as follows:

##### **12-60.1-01. Definitions.**

As used in this chapter:

1. "Court record" includes:
  - a. Any document or information collected, received, or maintained by court personnel in connection with a judicial proceeding;
  - b. Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by court personnel relating to a judicial proceeding; and
  - c. Information maintained by court personnel pertaining to the administration of the court or clerk of court office and not associated with a particular case.
2. "Criminal record" means court and prosecution records subject to sealing under this chapter. A criminal record does not include criminal history record information as defined in subsection 5 of section 12-60-16.1 or criminal justice data information maintained in the criminal justice data information sharing system under section 54-12-34.
3. "Employee" has the same meaning as in section 14-02.4-02.
4. "Employer" has the same meaning as in section 14-02.4-02.
5. "Prosecutor" means the office or agency with jurisdiction over the offense for purposes of postconviction proceedings.
6. "Seal" means to prohibit the disclosure of the existence or contents of court or prosecution records unless authorized by court order.

##### **12-60.1-02. Grounds to file petition to seal criminal record.**



1. An individual may file a petition to seal a criminal record if:
  - a. The individual pled guilty to or was found guilty of a misdemeanor offense and the individual has not been charged with a new crime for at least three years from the date of release from incarceration, parole, or probation; or
  - b. The individual pled guilty to or was found guilty of a felony offense and the individual has not been charged with a new crime for at least five years from the date of release from incarceration, parole, or probation.
2. This chapter does not apply to:
  - a. A felony offense involving violence or intimidation during the period in which the offender is ineligible to possess a firearm under subdivision a of subsection 1 of section 62.1-02-01; or
  - b. An offense for which an offender has been ordered to register under section 12.1-32-15.

### **12-60.1-03. Petition to seal criminal record.**

1. A petition to seal a criminal record must be filed in the existing criminal case for the offense.
2. Subject to redaction requirements in rule 3.4 of the North Dakota Rules of Court, a petition must include:
  - a. The petitioner's full name and all other legal names or aliases the petitioner has used at any time;
  - b. The petitioner's addresses from the date of the offense until the date of the petition;
  - c. Reasons why the petition should be granted;
  - d. The petitioner's criminal history in this state and any other state, federal court, and foreign country, including:
    - (1) All prior and pending criminal charges;
    - (2) All prior and pending charges for which an imposition of sentence has been deferred or stayed, or which have been continued for dismissal; and
    - (3) All prior requests by the petitioner with authorities in this state or another state or federal forum for pardon, return of arrest records, expungement, or sealing of a criminal record, whether granted or not.
3. The petitioner shall file a proposed order when filing a petition to seal a criminal record.
4. A petition filed under this section must be served upon the prosecuting official as provided by rule 49 of the North Dakota Rules of Criminal Procedure.

### **12-60.1-04. Hearing on petition.**

1. The court may grant a petition to seal a criminal record if the court determines by clear and convincing evidence:
  - a. The petitioner has shown good cause for granting the petition;
  - b. The benefit to the petitioner outweighs the presumption of openness of the criminal record;
  - c. The petitioner has completed all terms of imprisonment and probation for the offense;
  - d. The petitioner has paid all restitution ordered by the court for commission of the offense;
  - e. The petitioner has demonstrated reformation warranting relief; and
  - f. The petition complies with the requirements of this chapter.
2. In determining whether to grant a petition, the court shall consider:
  - a. The nature and severity of the underlying crime that would be sealed;
  - b. The risk the petitioner poses to society;
  - c. The length of time since the petitioner committed the offense;
  - d. The petitioner's rehabilitation since the offense;
  - e. Aggravating or mitigating factors relating to the underlying crime, including factors outlined in section 12.1-32-04;
  - f. The petitioner's criminal record, employment history, and community involvement;
  - g. The recommendations of law enforcement, prosecutors, corrections officials, and those familiar with the petitioner and the offense; and
  - h. The recommendations of victims of the offense.
3. A hearing on the petition may not be held earlier than forty-five days following the filing of the petition.
4. To the extent practicable, upon receipt of a petition to seal a criminal record, the prosecutor shall notify and seek input from law enforcement, witnesses, victims, and correctional authorities familiar with the petitioner and the offense.
5. This section does not prohibit a prosecutor from stipulating to seal a criminal record without a hearing or more expeditiously than provided in this section.
6. An individual may not appeal a denial of a petition from a district judge or magistrate.
7. An individual aggrieved by denial of a petition in a municipal court may appeal the denial to the district court for de novo review without payment of a filing fee. A petition denied by the district court may not be appealed.

8. Except as provided in this section, if a petition is denied an individual may not file a subsequent petition to seal a criminal record for at least three years following the denial.
9. If a court grants a petition to seal a criminal record, the court shall state in the court order that the petitioner is sufficiently rehabilitated but is subject to the provisions of section 12.1-33-02.1, and shall release the information when an entity has a statutory obligation to conduct a criminal history background check.

**SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-41-14 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual convicted of prostitution or an offense listed in subsection 1 of section 12.1-41-12 which was committed as a direct result of being a victim may apply by motion to the court to vacate the conviction and ~~expunge~~seal the record of conviction. The court may grant the motion on a finding that the individual's participation in the offense was a direct result of being a victim.

**SECTION 3. AMENDMENT.** Subsection 4 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

4. The state agency must develop and maintain a list of the names, addresses, and amounts of past-due support owed by obligors who have been found in contempt of court in this state for failure to comply with a child support order or who have been found guilty of willful failure to pay child support under section 12.1-37-01. Notwithstanding subsections 2 and 3, to the extent permitted by federal law, the state agency must release the list upon request under section 44-04-18. The state agency may remove from the list any obligor who no longer owes past-due support, any obligor who is deceased or whose obligation is being enforced in another jurisdiction, or any obligor whose conviction under section 12.1-37-01 has been ~~expunged~~sealed.

**SECTION 4. AMENDMENT.** Subdivision e of subsection 1 of section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

- e. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed the criminal history records check conducted by the bureau of criminal investigation and the federal bureau of investigation. The applicant shall provide all documentation relating to any court-ordered treatment or commitment for mental health or alcohol or substance abuse. The applicant shall provide the director of the bureau of criminal investigation written authorizations for disclosure of the applicant's mental health and alcohol or substance abuse evaluation and treatment records. The bureau may deny approval for a license if the bureau has reasonable cause to believe that the applicant or licenseholder has been or is a danger to self or others as demonstrated by evidence, including past pattern of behavior involving unlawful violence or threats of unlawful violence; past participation in incidents involving unlawful violence or threats of unlawful violence; or conviction of a weapons offense. In determining whether the applicant or licenseholder has been or is a danger to self or others, the bureau may inspect ~~expunged~~ or sealed records of arrests and convictions of adults and juvenile court records; and

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 104

### HOUSE BILL NO. 1396

(Representatives Schauer, Adams, Hoverson, K. Koppelman, Mitskog, Pyle, Satrom)  
(Senator Hogan)

AN ACT to create and enact a new subsection to section 12-67-02 of the North Dakota Century Code, relating to electronic monitoring; to amend and reenact section 14-09-22 of the North Dakota Century Code, relating to mandatory sentencing for abuse of a child; and to provide a penalty.

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

**SECTION 1.** A new subsection to section 12-67-02 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, an offender who has pled guilty or nolo contendere to, or has been found guilty of a felony under section 14-09-22, is not eligible for electronic home detention or home-based global positioning system monitoring if a minor is present in the home.

<sup>33</sup> **SECTION 2. AMENDMENT.** Section 14-09-22 of the North Dakota Century Code is amended and reenacted as follows:

#### **14-09-22. Abuse of child - Mandatory sentence - Penalty.**

1. Except as provided in subsection 2 or 3, a parent, adult family or household member, guardian, or other custodian of any child, who willfully inflicts or allows to be inflicted upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 is guilty of a class C felony except if the victim of an offense under this section is under the age of six years in which case the offense is a class B felony.
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 this section is guilty of a class B felony. Any such person ~~that~~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.
3. A person ~~that~~who commits an offense under this section is guilty of a class B felony if the victim suffers permanent loss or impairment of the function of a bodily member or organ, except if the victim of the offense is under the age of six years in which case the offense is a class A felony.
4. A person who has pled guilty or nolo contendere to, or has been found guilty of an offense under this section must be sentenced to a minimum of one year imprisonment.

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<sup>33</sup> Section 14-09-22 was also amended by section 1 of House Bill No. 1395, chapter 130.

Approved May 1, 2019

Filed May 2, 2019

# CRIMINAL CODE

## CHAPTER 105

### HOUSE BILL NO. 1039

(Legislative Management)  
(Justice Reinvestment Committee)

AN ACT to amend and reenact section 12.1-04-01 of the North Dakota Century Code, relating to culpability of a juvenile.

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

<sup>34</sup> **SECTION 1. AMENDMENT.** Section 12.1-04-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-04-01. Juveniles.**

~~Persons~~An individual under the age of ~~seventen~~ seven years ~~are~~is deemed incapable of commission of an offense defined by the constitution or statutes of this state. The prosecution of any ~~person~~individual as an adult is barred if the offense was committed while the ~~person~~individual was less than fourteen years of age.

Approved March 6, 2019

Filed March 6, 2019

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<sup>34</sup> Section 12.1-04-01 was also amended by section 1 of House Bill No. 1520, chapter 256.

## CHAPTER 106

### SENATE BILL NO. 2281

(Senator Dever)

AN ACT to amend and reenact section 12.1-05-05 of the North Dakota Century Code, relating to limitations on permissible use of force on a child.

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

**SECTION 1. AMENDMENT.** Section 12.1-05-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-05-05. Use of force by persons with parental, custodial, or similar responsibilities.**

The use of force upon ~~another person~~ an individual is justified under any of the following circumstances:

1. Except as provided in section 15.1-19-02, a parent, guardian, or other person responsible for the care and supervision of a minor, or other person responsible for the care and supervision of a minor for a special purpose, or a person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting the minor's welfare, including prevention and punishment of the minor's misconduct, and the maintenance of proper discipline.
  - a. If the person using reasonable force for the prevention and punishment of the minor's misconduct or the maintenance of proper discipline is a paid caregiver, that person must be acting under written direction of the parent or guardian of the minor.
  - b. The reasonable force may be used for this purpose, regardless of whether or not it the reasonable force is "necessary" as required by subsection 1 of section 12.1-05-07.
  - c. The reasonable force used ~~must~~ may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
2. A guardian or other person responsible for the care and supervision of an individual who is incompetent person, or a person acting at the direction of the guardian or responsible person, may use reasonable force upon the ~~incompetent person~~ individual for the purpose of safeguarding or promoting the ~~incompetent person's welfare of the individual~~, including the prevention of the ~~incompetent person's individual's~~ misconduct or, ~~when~~ if the ~~incompetent person~~ individual is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution.
  - a. The force may be used for these purposes, ~~whether or not it~~ regardless of whether the force is "necessary" as required by subsection 1 of section 12.1-05-07.

- b. The force used ~~must~~may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
3. A person responsible for the maintenance of order in a vehicle, train, vessel, aircraft, or other carrier, or in a place ~~where~~in which others are assembled, or a person acting at the responsible person's direction, may use force to maintain order.
  4. A duly licensed physician, or a person acting at a duly licensed physician's direction, may use force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered:
    - a. In an emergency;
    - b. With the consent of the patient, or, if the patient is a minor or an individual who is incompetent person, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or
    - c. By order of a court of competent jurisdiction.
  5. A person may use force upon ~~another person~~, an individual about to commit suicide or suffer serious bodily injury, to prevent the death or serious bodily injury of ~~such other person~~that individual.

Approved April 11, 2019

Filed April 12, 2019



## CHAPTER 107

### HOUSE BILL NO. 1393

(Representatives Heinert, Hanson, K. Koppelman)  
(Senators Bakke, D. Larson, Myrdal)

AN ACT to create and enact section 12.1-17-01.2 of the North Dakota Century Code, relating to domestic violence; to amend and reenact subsection 4 of section 12-60-16.4, section 12.1-17-01, subsection 6 of section 12.1-17-07.1, sections 12.1-17-13 and 12.1-32-07, and subsection 3 of section 12.1-38-01 of the North Dakota Century Code, relating to simple assault; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 12-60-16.4 of the North Dakota Century Code is amended and reenacted as follows:

4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-17-01.2, 12.1-20-12.1, 12.1-21-05, 12.1-21-06, 12.1-22-03, 12.1-23-05, and 12.1-29-03.

**SECTION 2. AMENDMENT.** Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-17-01. Simple assault.**

1. A person is guilty of an offense if that person:
  - a. Willfully causes bodily injury to another human being; or
  - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
  - a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
  - b. ~~A class B misdemeanor for the first offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and the actor has a prior conviction for simple assault under this section or an assault offense under~~

~~section 12.1-17-01.1 or 12.1-17-02 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 any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this subdivision.~~

- e. A class B misdemeanor except as provided in subdivision a or b.

**SECTION 3.** Section 12.1-17-01.2 of the North Dakota Century Code is created and enacted as follows:

**12.1-17-01.2. Domestic violence.**

1. For purposes of this section "family or household member" means family or household member as defined in section 14-07.1-01.
2. A person is guilty of an offense if that person willfully causes:
  - a. Bodily injury to the actor's family or household member;
  - b. Substantial bodily injury to the actor's family or household member; or
  - c. Serious bodily injury to the actor's family or household member.
3. The offense is:
  - a. A class B misdemeanor for the first offense under subdivision a of subsection 2 and a class A misdemeanor for a second or subsequent offense under this section or sections 12.1-17-01, 12.1-17-01.1, or 12.1-17-02 involving the commission of domestic violence, as defined in section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this section.
  - b. A class A misdemeanor for an offense under subdivision b of subsection 2 and a class C felony for an offense under subdivision c of subsection 2.
  - c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age.
4. A person charged with an offense under this section must be prosecuted in district court.

**SECTION 4. AMENDMENT.** Subsection 6 of section 12.1-17-07.1 of the North Dakota Century Code is amended and reenacted as follows:

6. a. A person who violates this section is guilty of a class C felony if:
  - (1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense from another court in North Dakota, a court of record in the United States, or a tribal court, involving the victim of the stalking;

- (2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or
  - (3) The person previously has been convicted of violating this section.
- b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

**SECTION 5. AMENDMENT.** Section 12.1-17-13 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-17-13. Mandated treatment of domestic violence offenders.**

The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic violence offender evaluation and treatment program as determined by the court. A court may not order the offender to attend anger management classes or individual counseling unless a domestic violence offender treatment program is not reasonably available to the defendant and the court makes findings for the record explaining why an order to complete a domestic violence offender treatment program would be inappropriate.

<sup>35</sup> **SECTION 6. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may 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. 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.
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

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<sup>35</sup> Section 12.1-32-07 was also amended by section 2 of House Bill No. 1185, chapter 118.

court shall order supervision costs and fees of not less than fifty-five dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.

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. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
  - a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house;
  - h. Intensive supervision program;
  - i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours;
  - j. Participation in the twenty-four seven sobriety program; or
  - k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.
4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or

deferred imposition of sentence, the court may impose such conditions as it deems appropriate and may include any one or more of the following:

- a. Work faithfully at a suitable employment or faithfully pursue a course of study or of career and technical education training that will equip the defendant for suitable employment.
- b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- d. Support the defendant's dependents and meet other family responsibilities.
- e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
- f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
- 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.
- p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant. When reimbursement of indigent

- defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 4 of section 12.1-32-08.
- q. Provide community service for the number of hours designated by the court.
  - r. Refrain from any subscription to, access to, or use of the internet.
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.
  9. 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.

**SECTION 7. AMENDMENT.** Subsection 3 of section 12.1-38-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Crime" includes an offense named in section 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-17-01, 12.1-17-01.1, ~~12.1-17-01.2~~, 12.1-17-02, 12.1-17-03, 12.1-17-04, chapter 12.1-18, section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-07, chapter 12.1-21, section 12.1-22-01, 12.1-22-02, or 12.1-22-03, or an attempt to commit any of these offenses. The term includes a crime in other states which would have been within this definition if the crime had been committed in this state.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 108

### SENATE BILL NO. 2273

(Senators Poolman, Bakke, D. Larson)  
(Representatives Hanson, Karls)

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to sexual extortion; and to amend and reenact section 12.1-32-15 and subsection 3 of section 50-25.1-02 of the North Dakota Century Code, relating to offenders against children, sexual offenders, sexually violent predators, and child abuse and neglect.

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

**SECTION 1.** A new section to chapter 12.1-20 of the North Dakota Century Code is created and enacted as follows:

##### Sexual extortion.

1. An individual commits the offense of sexual extortion if the individual:
  - a. With an intent to coerce a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute an image, video, or other recording of any individual engaged in sexually explicit conduct or any intimate image of an individual, or a demand for money, communicates in person or by electronic means:
    - (1) A threat to the victim's or another's person, property, or reputation; or
    - (2) A threat to distribute or an enticement to delete an intimate image or video of the victim or another.
  - b. Knowingly causes a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute any image, video, or other recording of any individual engaged in sexually explicit conduct or any intimate image of an individual, or a demand for money, by means of:
    - (1) A threat to the victim's or another's person, property, or reputation; or
    - (2) A threat to distribute or an enticement to delete an intimate image or video of the victim or another.
2. The offense is:
  - a. A class B felony if the actor's conduct violates subdivision b of subsection 1 and the victim is a minor or vulnerable adult, otherwise a class A misdemeanor.
  - b. A class A misdemeanor if the actor's conduct violates subdivision a of subsection 1.

3. For purposes of this section:

- a. "Intimate image" has the meaning provided in subsection 1 of section 12.1-17-07.2.
- b. "Sexual contact" has the meaning provided in section 12.1-20-02.
- c. "Sexually explicit conduct" has the meaning provided in subsection 1 of section 12.1-17-07.2.
- d. "Simulated sexually explicit conduct" has the meaning provided in subsection 1 of section 12.1-17-07.

<sup>36</sup> **SECTION 2. AMENDMENT.** Section 12.1-32-15 of 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, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
- b. "Department" means the department of corrections and rehabilitation.
- c. "Homeless" means an individual who is physically present in this state, but is living in a park, under a bridge, on the streets, in a vehicle or camper, or is otherwise without a traditional dwelling, and also one who resides in this state but does not maintain a permanent address. The term does not include individuals who are temporarily domiciled or individuals residing in public or private shelters that provide temporary living accommodations.
- d. "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.
- e. "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.
- f. "Reside" means to live permanently or be situated for a considerable time in a home or a particular place.

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<sup>36</sup> Section 12.1-32-15 was also amended by section 1 of Senate Bill No. 2253, chapter 120.



- g. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07 except for subdivision a of subsection 1, 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, subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or 12.1-41-06, section 1 of this Act except for subdivision a of subsection 1 and subdivision b of subsection 1 if the offense involves only a demand for money, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.
- h. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
- i. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides, is homeless, or within the period identified in this section that the individual becomes 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. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that individual:
- a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
- b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
- c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.

- d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
3. If a court has not ordered an individual to register in this state, an individual who resides, is homeless, or is temporarily domiciled in this state shall register if the individual:
    - a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
    - b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
    - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
  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 biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, biometric data, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall register, within three days after the change, with the law enforcement agency with which that individual last registered of the individual's new vehicle or computer online identity. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall register, at least ten days before the change, with the law enforcement agency with which that individual last registered of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section, the

individual shall register within three days of the termination with the law enforcement agency with which the individual last registered. 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 three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the biometric data portion of the registration if that agency has a set of biometric data 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 fifteen years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later;
  - b. A period of twenty-five years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the attorney general as provided in subsection 12; or
  - c. For the life of the individual, if that individual:
    - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of a crime against a child or as a sexual offender. If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
    - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim, or an equivalent offense from another court in the United States, a tribal court, or court of another country; or
    - (3) Is assigned a high risk by the attorney general as provided in subsection 12.
9. An individual required to register under this section who violates this section is guilty of a class C felony. The failure of a homeless individual to register as required in subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve

an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.

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.
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 sexual 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 attorney general shall notify the offender of the risk level assigned to that offender. An offender may request a review of that determination with the attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.
13. An individual assessed as a high-risk sexual offender in accordance with subsection 12, may not reside within five hundred feet [152.4 meters] of a public or nonpublic preschool or elementary, middle, or high school.

14. 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 disclosure of the conviction and registration information is necessary for public protection. 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 of the offense to the victim registered under chapter 12.1-34 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.

15. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 12.1-20-25, or for disclosing or for failing to disclose information as permitted by this section.
16. 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, or the public if disclosure is necessary to protect public health or safety. The law enforcement agency shall release any relevant and necessary information on file to the superintendent or principal of the school the juvenile attends. The school administration shall notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.
17. 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.
18. A sexual offender who is currently assigned a moderate or high-risk level by the attorney general may not use a state park of this state as a residence or residential address to comply with the registration requirements of this section. Before arriving at a state park for overnight lodging or camping, a sexual offender who is assigned a moderate or high-risk level by the attorney general

shall notify a parks and recreation department law enforcement officer at the state park where the sexual offender will be staying.

**Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty. (Contingent effective date - [See note](#))**

1. As used in this section:

- a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
- b. "Department" means the department of corrections and rehabilitation.
- c. "Homeless" means an individual who is physically present in this state, but is living in a park, under a bridge, on the streets, in a vehicle or camper, or is otherwise without a traditional dwelling, and also one who resides in this state but does not maintain a permanent address. The term does not include individuals who are temporarily domiciled or individuals residing in public or private shelters that provide temporary living accommodations.
- d. "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.
- e. "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.
- f. "Reside" means to live permanently or be situated for a considerable time in a home or a particular place.
- g. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07 except for subdivision a of subsection 1, 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, subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or 12.1-41-06, section 1 of this Act except for subdivision a of subsection 1 and subdivision b of subsection 1 if the offense involves only a demand for money, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.
- h. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.

- i. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides, is homeless, or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city of the individual's place of residence, or the sheriff of the county if the individual resides in an area other than a city. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that individual:
  - a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
  - b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.



3. If a court has not ordered an individual to register in this state, an individual who resides, is homeless, or is temporarily domiciled in this state shall register if the individual:
  - a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
  - b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
  - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
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 or electronic statement signed by the individual, giving the information required by the attorney general, and the biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, biometric data, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall register, within three days after the change, with the law enforcement agency having local jurisdiction of the individual's place of residence of the individual's new vehicle or computer online identity. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall register, at least ten days before the change, with the law enforcement agency having local jurisdiction of the individual's place of residence of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section, the individual shall register within three days of the termination with the law enforcement agency having local jurisdiction of the individual's place of residence. 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 also shall register within three days at the law enforcement agency having local jurisdiction of the new place of residence. If an individual required to register in North Dakota, including in a tribal registry, resides in another state or on tribal lands, that individual shall register employment and school addresses and any changes in required registration information with the law enforcement agency having local jurisdiction over the school or employment address. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the biometric data portion of the registration if that agency has a set of

biometric data 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 fifteen years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later;
  - b. A period of twenty-five years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the attorney general as provided in subsection 12; or
  - c. For the life of the individual, if that individual:
    - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of a crime against a child or as a sexual offender. If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
    - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim, or an equivalent offense from another court in the United States, a tribal court, or court of another country; or
    - (3) Is assigned a high risk by the attorney general as provided in subsection 12.
9. An individual required to register under this section who violates this section is guilty of a class C felony. The failure of a homeless individual to register as required in subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.
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.
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 sexual 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 attorney general shall notify the offender of the risk level assigned to that offender. An offender may request a review of that determination with the attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.
13. An individual assessed as a high-risk sexual offender in accordance with subsection 12, may not reside within five hundred feet [152.4 meters] of a public or nonpublic preschool or elementary, middle, or high school.
14. 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 disclosure of the conviction and registration information is necessary for public protection. 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 of the offense to the victim registered under chapter 12.1-34 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.

15. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 12.1-20-25, or for disclosing or for failing to disclose information as permitted by this section.
16. 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, or the public if disclosure is necessary to protect public health or safety. The law enforcement agency shall release any relevant and necessary information on file to the superintendent or principal of the school the juvenile attends. The school administration shall notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.
17. 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.
18. A sexual offender who is currently assigned a moderate or high-risk level by the attorney general may not use a state park of this state as a residence or residential address to comply with the registration requirements of this section. Before arriving at a state park for overnight lodging or camping, a sexual offender who is assigned a moderate or high-risk level by the attorney general shall notify a parks and recreation department law enforcement officer at the state park where the sexual offender will be staying.

<sup>37</sup> **SECTION 3. AMENDMENT.** Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person

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<sup>37</sup> Section 50-25.1-02 was also amended by section 1 of House Bill No. 1108, chapter 416, section 6 of House Bill No. 1520, chapter 256, section 124 of Senate Bill No. 2124, chapter 391, and section 8 of Senate Bill No. 2245, chapter 406.

responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, section 1 of this Act, or chapter 12.1-27.2.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 109

### HOUSE BILL NO. 1465

(Representatives Meier, Buffalo, Hanson, K. Koppelman, Roers Jones)  
(Senators Dever, Hogan, Myrdal)

AN ACT to amend and reenact sections 12.1-20-16 and 12.1-29-06 of the North Dakota Century Code, relating to appointment of guardian ad litem in prosecution for sex offenses and solicitation offense; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-20-16 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-20-16. Appointment of a guardian ad litem in prosecution for sex offenses.**

A minor or ~~a person~~an individual with a developmental disability who is a material or prosecuting witness in a criminal proceeding involving an act in violation of sections 12.1-20-01 through 12.1-20-08, ~~or~~ section 12.1-20-11, ~~or chapter 12.1-41,~~ may, at the discretion of the district court, have the witness' interests represented by a guardian ad litem at all stages of the proceedings arising from the violation. The appointment may be made upon the order of the court on its own motion or at the request of a party to the action. The guardian ad litem may, but need not, be a licensed attorney and must be designated by the court after due consideration is given to the desires and needs of the minor or the ~~person~~individual with a developmental disability. ~~A person~~An individual who is also a material witness or prosecuting witness in the same proceeding may not be designated guardian ad litem. The guardian ad litem must receive notice of and may attend all depositions, hearings, and trial proceedings to support the minor or the ~~person~~individual with a developmental disability and advocate for the protection of the minor or the ~~person~~individual with a developmental disability but may not separately introduce evidence or directly examine or cross-examine witnesses. The expenses of the guardian ad litem, when approved by the judge, must be paid by the supreme court. The state shall also pay the expenses of the guardian ad litem in commitment proceedings held in district court pursuant to chapter 25-03.1.

**SECTION 2. AMENDMENT.** Section 12.1-29-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-29-06. Hiring an individual to engage in sexual activity.**

~~An~~Except as provided in section 12.1-41-06, an individual who hires or offers or agrees to hire another individual with the intention of engaging in sexual activity is guilty of:

1. A class B misdemeanor for a first offense; and
2. A class A misdemeanor for a second or subsequent offense within ten years.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 110

### SENATE BILL NO. 2044

(Senators Myrdal, Unruh, Oehlke)  
(Representatives Schmidt, Damschen)

AN ACT to amend and reenact section 12.1-21-06 of the North Dakota Century Code, relating to tampering with or damaging a critical infrastructure facility or a public service; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-21-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-21-06. Tampering with or damaging a critical infrastructure facility or a public service - Penalty.**

1. ~~A person is guilty of an offense if he causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power, or other facility or a public service by:~~  
An individual may not cause a critical infrastructure facility or a public service by:
  - a. Tampering with or damaging the tangible property of another;
  - b. Incapacitating an operator of ~~such a~~ a critical infrastructure facility or a public service; ~~or~~
  - c. ~~Negligently damaging the tangible property of another by fire, explosive, or other dangerous means. Damaging, destroying, vandalizing, defacing, or tampering with equipment in a critical infrastructure facility;~~ Damaging, destroying, vandalizing, defacing, or tampering with the operations of a critical infrastructure facility;
  - d. Damaging, destroying, vandalizing, defacing, impeding, inhibiting, or tampering with the operations of a critical infrastructure facility; ~~or~~
  - e. Interfering, inhibiting, impeding, or preventing the construction or repair of a critical infrastructure facility.
2. ~~The offense~~A violation of this section is a class C felony if the actor engages in the conduct intentionally and a class A misdemeanor if the actor engages in the conduct knowingly or recklessly. Otherwise it is a class B misdemeanor.
3. This section does not apply to an employee or contractor acting within the scope of the employee's or contractor's employment. As used in this subsection, "employee or contractor" means any person hired or under contract to provide services to a critical infrastructure facility or public service.
4. An organization that has pled guilty or been convicted of a violation under section 12.1-06-04 for conspiring with an individual who has pled guilty or been convicted under subsection 1 must be assessed a fine equivalent to the penalty authorized by subsection 2 for each individual who has pled guilty or



been convicted under subsection 1, not to exceed one hundred thousand dollars.

5. This section may not be construed to prevent or prohibit lawful assembly and peaceful and orderly petition for the redress of grievances, including a labor dispute between an employer and its employee.
6. As used in this section, "critical infrastructure facility" includes:
  - a. A petroleum or alumina refinery;
  - b. An electrical power generating facility, substation, switching station, electrical control center, or electric power line and associated equipment infrastructure;
  - c. A chemical, polymer, or rubber manufacturing facility;
  - d. A drinking water source, water transmission line, water treatment plant, water distribution system, ground water monitoring well, waste water treatment plant, or waste water collection system;
  - e. A natural gas compressor station;
  - f. A liquid natural gas terminal or storage facility;
  - g. Wireline telecommunications and internet infrastructure, including central offices, fiber optic lines, cable lines, and all additional equipment associated with the provision of broadband or telecommunication services;
  - h. Wireless telecommunications infrastructure, including a cell tower, telephone pole or line, including a fiber optic line;
  - i. A port, railroad switching yard, railroad track, trucking terminal, or other freight transportation facility;
  - j. A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas or a natural gas liquid;
  - k. A transmission facility used by a federally licensed radio or television station;
  - l. A steel-making facility using an electric arc furnace to make steel;
  - m. A facility identified and regulated by the United States department of homeland security chemical facility anti-terrorism standards program;
  - n. A dam regulated by the state or federal government;
  - o. A natural gas transmission or distribution utility facility, including a pipeline interconnection, a city gate or town border station, a metering station, below or aboveground piping, a regulator station, and a natural gas storage facility;
  - p. A crude oil or refined product storage and distribution facility, including a valve site, pipeline interconnection, pump station, metering station, below or aboveground pipeline or piping, and a truck loading or offloading facility;

- q. Any below or aboveground portion of an oil, gas, hazardous liquid, or chemical pipeline, tank, railroad facility, or other storage facility;
- r. An oil and gas production site; and
- s. A site or location designated or approved for the construction of a facility described in this subsection.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 111

### SENATE BILL NO. 2262

(Senators Klein, Patten)  
(Representatives Keiser, Zubke)

AN ACT to create and enact two new sections to chapter 12.1-23 of the North Dakota Century Code, relating to the use and possession of re-encoders and scanning devices; to amend and reenact section 12.1-23-11 of the North Dakota Century Code, relating to the unauthorized use of personal identifying information; to repeal section 12.1-23-17 of the North Dakota Century Code, relating to the unlawful skimming of credit, debit, or other electronic payment cards; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 12.1-23 of the North Dakota Century Code is created and enacted as follows:

##### Definitions.

##### As used in this chapter:

1. "Payment card" means a credit card, charge card, debit card, or any other card issued to an authorized card user which allows the user to obtain, purchase, or receive credit, money, goods, services, or anything else of value.
2. "Re-encoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card, driver's license, or state-issued identification card, or any electronic medium that allows an authorized transaction to occur.
3. "Scanning device" means a scanner, reader, or any other electronic device used to access, read, scan, obtain, memorize, or store, information encoded on a computer chip or magnetic strip or stripe of a payment card, driver's license, or state-issued identification card.
4. "Skimmer" means an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner the financial information contained on a payment card or encoded on a computer chip or magnetic strip or stripe of a payment card.

**SECTION 2. AMENDMENT.** Section 12.1-23-11 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-23-11. Unauthorized use of personal identifying information - Penalty.**

1. As used in this section, "personal identifying information" means any of the following information:

- a. An individual's name;
  - b. An individual's address;
  - c. An individual's telephone number;
  - d. The operator's license information assigned to an individual by the department of transportation under section 39-06-14;
  - e. An individual's social security number;
  - f. An individual's employer or place of employment;
  - g. An identification number assigned to the individual by the individual's employer;
  - h. The maiden name of the individual's mother;
  - i. An individual's financial institution account number, credit card number, or debit card number;
  - j. An individual's birth, death, or marriage certificate;
  - k. An individual's health insurance policy number or subscriber identification number or any unique identifier used by a health insurer to identify the individual;
  - l. The nondriver color photo identification card information assigned to the individual by the department of transportation under section 39-06-03.1; or
  - m. An individual's digitized or other electronic signature;
  - n. An individual's photograph or computerized image;
  - o. An individual's electronic mail address; or
  - p. An individual's username and password of any digital service or computer system;
  - q. An individual's payment card information;
  - r. An individual's biometric data; or
  - s. Any other numbers, documents, or information that can be used to access another person's financial records.
2. An individual is guilty of an offense if the individual obtains or attempts to obtain, transfers, records, or uses or attempts to use any personal identifying information of another individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the other individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.

3. A person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, without the authorization or consent of the individual, in order to interfere with or initiate a contract or service for a person other than that individual, to obtain or continue employment, to gain access to personal identifying information of another individual, or to commit an offense in violation of the laws of this state, regardless of whether there is any actual economic loss to the individual. A first offense under this subsection is a class A misdemeanor. A second or subsequent offense under this subsection is a class C felony.
4. A violation of this section, of a law of another state, or of federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. 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.
5. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.
6. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.

**SECTION 3.** A new section to chapter 12.1-23 of the North Dakota Century Code is created and enacted as follows:

**Use and possession of re-encoders and scanning devices - Penalty.**

1. An individual is guilty of a class B felony if the individual uses or attempts to use a skimmer, re-encoder, or a scanning device to obtain information from a payment card, driver's license, or state-issued identification card without the permission of the authorized card user of the card from which the information is being skimmed, re-encoded, or scanned. An individual convicted of a second or subsequent violation of this subsection is guilty of a class A felony and also is subject to a civil penalty of not more than one hundred thousand dollars.
2. An individual is guilty of a class A misdemeanor if the individual owns or possess a skimmer, re-encoder, or scanning device with the intent to commit, aid, or abet any unlawful activity.

**SECTION 4. REPEAL.** Section 12.1-23-17 of the North Dakota Century Code is repealed.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 112

### HOUSE BILL NO. 1097

(Representatives Roers Jones, Beadle, Pyle, Blum, Louser, Nathe, Becker)  
(Senators Holmberg, J. Lee, Meyer, Poolman, Davison)

AN ACT to amend and reenact section 12.1-30-04 of the North Dakota Century Code, relating to Sunday closing laws and retail agreements; to repeal sections 12.1-30-01, 12.1-30-02, and 12.1-30-03 of the North Dakota Century Code, relating to Sunday closing laws; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-30-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-30-04. Retail business leases or agreements - Penalty.**

A retail business may not be required to be open on Sunday as a part of a lease agreement, franchise agreement, or any other contractual arrangement entered and executed before January 1, 2019. A violation of this section is a class A misdemeanor.

**SECTION 2. REPEAL.** Sections 12.1-30-01, 12.1-30-02, and 12.1-30-03 of the North Dakota Century Code are repealed.

Approved March 25, 2019

Filed March 25, 2019

## CHAPTER 113

### SENATE BILL NO. 2203

(Senators Myrdal, Bakke, Dwyer)  
(Representatives Buffalo, Satrom, Vetter)

AN ACT to amend and reenact section 12.1-31-01.2 of the North Dakota Century Code, relating to sexual assault restraining orders.

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

<sup>38</sup> **SECTION 1. AMENDMENT.** Section 12.1-31-01.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-31-01.2. Sexual assault restraining order - Penalty.**

1. For purposes of this section:
  - a. "Second or subsequent violation of a protection order" means two or more violations of protection orders.
  - b. "Sexual assault" means any nonconsensual offense in chapter 12.1-20 for which sexual act or sexual contact, as defined in section 12.1-20-07, 12.1-20-02, is an element.
2. An individual who is the victim of sexual assault or the parent, stepparent, or guardian of a minor who reasonably believes the minor is a victim of sexual assault may seek a sexual assault restraining order from a court of competent jurisdiction in the manner provided in this section.
3. A petition for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual who committed the sexual assault, and that the individual committed the sexual assault. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition.
4. If the petition for relief alleges reasonable grounds to believe an individual has committed sexual assault, the court, pending a full hearing, may grant a temporary sexual assault restraining order.
5. A temporary restraining order may be entered only against the individual named in the petition. The order must include prohibiting the individual from:
  - a. Harassing, stalking, or threatening the individual requesting the order;
  - b. Appearing at the individual's residence, school, and place of employment; and
  - c. Contacting the individual requesting the order.

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<sup>38</sup> Section 12.1-31-01.2 was also amended by section 1 of Senate Bill No. 2071, chapter 114.

6. The court may grant a sexual assault restraining order prohibiting the respondent from contacting, harassing, stalking, or threatening the applicant, and from appearing at the applicant's residence, school, and place of employment if:
  - a. An individual files a petition under subsection 3;
  - b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsections 4 and 5, and with notice of the time and place of the hearing;
  - c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order unless the time period is extended upon written consent of the parties, or upon a showing the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence; and
  - d. The court finds after the hearing there are reasonable grounds to believe the respondent committed sexual assault.
7. A restraining order may be issued only against the individual named in the petition. Relief granted by the restraining order may not exceed a period of two years. The restraining order may be served on the respondent by publication pursuant to rule 4 of the North Dakota Rules of Civil Procedure.
8. A sexual assault 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 as a class A misdemeanor; 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.
9. If the respondent knows of an order issued under subsections 4 and 5, or subsection 6, violation of the order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony. If the existence of an order issued under subsection 3, or subsections 4 and 5 can be verified by a peace officer, the officer, without a warrant, may arrest and take into custody an individual whom the peace officer has probable cause to believe has violated the order.
10. The clerk of court shall transmit a copy of a restraining order by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the alleged victim of sexual assault. Each appropriate law enforcement agency may make available to its officers current information as to the existence and status of any restraining order involving sexual assault.



11. Notwithstanding subsection 5 of section 11-16-05, a state's attorney may advise and assist an individual in the preparation of documents necessary to secure a restraining order under this section.
12. Fees for filing and service of process may not be charged to the petitioner in a proceeding seeking relief due to sexual assault under section 12.1-20-07.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 114

### SENATE BILL NO. 2071

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 6 of section 12.1-31-01.2 and subsection 5 of section 12.1-31.2-01 of the North Dakota Century Code, relating to restraining orders.

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

<sup>39</sup> **SECTION 1. AMENDMENT.** Subsection 6 of section 12.1-31-01.2 of the North Dakota Century Code is amended and reenacted as follows:

6. The court may grant a sexual assault restraining order prohibiting the respondent from contacting, harassing, stalking, or threatening the applicant, and from appearing at the applicant's residence, school, and place of employment if:
  - a. An individual files a petition under subsection 3;
  - b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsections 4 and 5, and with notice of the time and place of the hearing;
  - c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order ~~unless the time period is extended upon written consent of the parties, or upon a showing the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or at a later date if good cause is shown;~~ and
  - d. The court finds after the hearing there are reasonable grounds to believe the respondent committed sexual assault.

<sup>40</sup> **SECTION 2. AMENDMENT.** Subsection 5 of section 12.1-31.2-01 of the North Dakota Century Code is amended and reenacted as follows:

5. The court may grant a disorderly conduct restraining order ordering the respondent to cease or avoid the disorderly conduct or to have no contact with the applicant if:
  - a. A person files a petition under subsection 3;

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<sup>39</sup> Section 12.1-31-01.2 was also amended by section 1 of Senate Bill No. 2203, chapter 113.

<sup>40</sup> Section 12.1-31.2-01 was also amended by section 2 of Senate Bill No. 2036, chapter 54.

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- b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsection 4 and with notice of the time and place of the hearing;
  - c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order ~~unless the time period is extended upon written consent of the parties, or upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or at a later date if good cause is shown;~~ and
  - d. The court finds after the hearing that there are reasonable grounds to believe that the respondent has engaged in disorderly conduct. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 115

### HOUSE BILL NO. 1477

(Representative Mitskog)  
(Senator J. Lee)

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to prohibiting the sale of flavored e-liquid to minors; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

##### **Sale of flavored e-liquid to minors prohibited - Penalty.**

1. A person may not sell, offer for sale, or distribute in this state any flavored e-liquid or electronic smoking device containing flavored e-liquid to a minor.
2. A person that violates subsection 1 and is not a manufacturer is subject to a fine of five hundred dollars for each individual package of flavored e-liquid product or electronic smoking device containing flavored e-liquid sold or offered for sale.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 116

### HOUSE BILL NO. 1503

(Representatives Damschen, Boe, Headland, Magrum, Schmidt)  
(Senators Myrdal, Patten, Schaible, Unruh)

AN ACT to amend and reenact section 12.1-31-14 of the North Dakota Century Code, relating to prohibiting use of a device to observe, record, or photograph wildlife on private property without permission and a permanently affixed identifier; and to provide a penalty.

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

<sup>41</sup> **SECTION 1. AMENDMENT.** Section 12.1-31-14 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-31-14. Surreptitious intrusion or interference with privacy.**

1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:
  - a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or
  - b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:
  - a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
  - b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy.
3. An individual is guilty of an infraction if the individual enters upon another's property and installs any device for observing, recording, or photographing wildlife while the owner of the device is absent:
  - a. Without written permission from the owner or occupant of the property; or
  - b. If the device does not have a permanently affixed metal or plastic tag with a registration number issued by the game and fish department, or the individual's name, address, and telephone number.

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<sup>41</sup> Section 12.1-31-14 was also amended by section 1 of Senate Bill No. 2113, chapter 403.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 117

### HOUSE BILL NO. 1252

(Representatives Louser, Becker, Blum, Kading, Kasper, K. Koppelman)  
(Senators Burckhard, Hogue, Poolman, Unruh)

AN ACT to create and enact a new subsection to section 12.1-34-02 of the North Dakota Century Code, relating to rights of victims; to amend and reenact subsection 1 of section 12.1-32-02, subsection 1 of section 12.1-32-08, and subsection 10 of section 12.1-34-01 of the North Dakota Century Code, relating to contact with victims, the definition of victim, and restitution; and to declare an emergency.

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

<sup>42</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
  - a. Payment of the reasonable costs of the person's prosecution.
  - b. Probation.
  - c. A term of imprisonment, including intermittent imprisonment:
    - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
    - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
    - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.
    - (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.
  - d. A fine.
  - e. Restitution for damages resulting from the commission of the offense.

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<sup>42</sup> Section 12.1-32-02 was also amended by section 1 of House Bill No. 1164, chapter 188, and section 1 of House Bill No. 1185, chapter 118.

- f. Restoration of damaged property or other appropriate work detail.
- g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
- h. Commitment to a sexual offender treatment program.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08. If the person is sentenced to a term of imprisonment, the court may prohibit the person from contacting the victim during the term of imprisonment. For purposes of this subsection, "victim" means victim as defined in section 12.1-34-01.

<sup>43</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court 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.~~ Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining whether to order the amount of restitution, the court shall take into account:
  - a. ~~The~~ the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
  - b. ~~The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.~~

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<sup>43</sup> Section 12.1-32-08 was also amended by section 1 of Senate Bill No. 2068, chapter 270.



- e. ~~The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.~~

The court shall fix the amount of restitution or reparation, ~~which may not exceed an amount the defendant can or will be able to pay~~, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced.

**SECTION 3. AMENDMENT.** Subsection 10 of section 12.1-34-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Victim" means a ~~natural~~ person who ~~has suffered~~suffers direct or threatened physical, financial, or psychological harm as the result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. ~~The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.~~ The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

<sup>44</sup> **SECTION 4.** A new subsection to section 12.1-34-02 of the North Dakota Century Code is created and enacted as follows:

If the victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim which is substantially similar to a listed relationship, may exercise the rights granted to a victim under this chapter.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2019

Filed April 9, 2019

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<sup>44</sup> Section 12.1-34-02 was also amended by section 1 of House Bill No. 1425, chapter 268.

## CHAPTER 118

### HOUSE BILL NO. 1185

(Representatives Kading, Blum, Meier, Vetter)  
(Senator O. Larsen)

AN ACT to create and enact a new subsection to section 12.1-32-07 of the North Dakota Century Code, relating to petitions for revocation of probation; to amend and reenact subsection 9 of section 12.1-32-02 of the North Dakota Century Code, relating to reduction of felonies to misdemeanors by operation of law; and to provide a penalty.

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

<sup>45</sup> **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~~three hundred sixty days is deemed to have been convicted of a misdemeanor ~~upon successful completion of the term of imprisonment and a term of probation imposed as a part of the sentence.~~ However, if an order is entered revoking a term of probation that was imposed as part of a 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.

<sup>46</sup> **SECTION 2.** A new subsection to section 12.1-32-07 of the North Dakota Century Code is created and enacted as follows:

The department of corrections and rehabilitation shall provide written notice to a defendant who is in the department's physical custody of any untried petition for revocation against the defendant of which the department has notice and of the defendant's right to make a request for final disposition of the petition.

- a. Upon notice of an untried petition for revocation of probation, the defendant may request final disposition of the petition. The defendant's request must be in writing and name the court in which the petition for revocation of probation is pending and the prosecuting official charged with the duty of prosecuting the petition.
- b. The defendant shall submit the request to the department. The department shall certify the term of commitment under which the defendant is being held, the time the defendant has served on the sentence, the time remaining to be served, sentence reduction credit the defendant has earned, the defendant's eligibility for parole, and whether the parole board has made a decision regarding the defendant's parole.

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<sup>45</sup> Section 12.1-32-02 was also amended by section 1 of House Bill No. 1164, chapter 188, and section 1 of House Bill No. 1252, chapter 117.

<sup>46</sup> Section 12.1-32-07 was also amended by section 6 of House Bill No. 1393, chapter 107.

- c. The department shall send by registered mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting official to whom the request and certificate is addressed.
- d. The petition for revocation of probation must be brought to the court for hearing within ninety days after the receipt of the request and certificate by the court and prosecuting official. If the petition is not brought to the court for hearing within the ninety days, the court shall dismiss the petition with prejudice.
- e. The parties may stipulate for a continuance or the court may grant a continuance upon a showing of good cause by either party for a petition under this subsection.
- f. If the defendant escapes from custody subsequent to the defendant's execution of a request for final disposition of a petition for revocation, the request is considered void.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 119

### HOUSE BILL NO. 1051

(Representatives Roers Jones, Schreiber-Beck, Dockter, Satrom)  
(Senator Myrdal)

AN ACT to amend and reenact section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing violent offenders; and to provide for retroactive application.

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

**SECTION 1. AMENDMENT.** Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-32-09.1. Sentencing of violent offenders.**

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.
2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.
3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.
5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.

**SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to judgments of conviction for offenses subject to section 12.1-32-09.1 entered after July 31, 1995.

Approved March 13, 2019

Filed March 14, 2019

## CHAPTER 120

### SENATE BILL NO. 2253

(Senators D. Larson, Bakke, Myrdal)  
(Representatives P. Anderson, Jones, Karls)

AN ACT to create and enact a new subsection to section 12.1-32-15 of the North Dakota Century Code, relating to international travel reporting requirements for registered offenders.

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

<sup>47</sup> **SECTION 1.** A new subsection to section 12.1-32-15 of the North Dakota Century Code is created and enacted as follows:

When an individual who is required to register pursuant to this section plans to travel outside of the United States, at least 21 days before the intended travel, the individual shall inform the agency with which the individual last registered his residence address the details of the intended travel. Upon receipt of the information from the registering law enforcement agency, the attorney general shall report the travel to the United States marshal service.

Approved March 14, 2019

Filed March 14, 2019

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<sup>47</sup> Section 12.1-32-15 was also amended by section 2 of Senate Bill No. 2273, chapter 108.

## CHAPTER 121

### HOUSE BILL NO. 1282

(Representatives Schneider, Adams, Buffalo, Dobervich, Guggisberg, Hanson,  
McWilliams, Mitskog, Roers Jones, Satrom)  
(Senators Bakke, Dwyer)

AN ACT to create and enact a new section to chapter 12.1-33 of the North Dakota Century Code, relating to limitations on public employer consideration of criminal background.

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

**SECTION 1.** A new section to chapter 12.1-33 of the North Dakota Century Code is created and enacted as follows:

##### **Public employment - Consideration of criminal record.**

1. A public employer may not inquire into or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview by the employer.
2. This section does not apply to the department of corrections and rehabilitation or to a public employer that has a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process.
3. This section does not prohibit a public employer from notifying an applicant that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.
4. As used in this section, the term "public employer" means the state or a county or city government, or an instrumentality or agency of the state or of a county or city government. The term includes a park district but does not include a school district.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 122

### SENATE BILL NO. 2222

(Senators Myrdal, Heckaman)  
(Representatives P. Anderson, Jones, K. Koppelman)

AN ACT to amend and reenact section 12.1-36-01 of the North Dakota Century Code, relating to female genital mutilation; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-36-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-36-01. Surgical alteration of the genitals of female minor - Penalty - Exception.**

1. Except as provided in subsection 2, any person who knowingly separates or surgically alters normal, healthy, functioning genital tissue of a female minor is guilty of a class C felony.
2. A surgical operation is not a violation of this section if a licensed medical practitioner performs the operation to correct an anatomical abnormality or to remove diseased tissue that is an immediate threat to the health of the female minor. In applying this subsection, any belief that the operation is required as a matter of custom, ritual, or standard of practice may not be taken into consideration.
3. Any parent, adult family or household member, guardian, or other custodian of any child who willfully allows a child to be surgically altered under this section is guilty of child abuse under subsection 1 of section 14-09-22.
4. A custom, ritual, religious practice, or the consent of the parent or guardian of a minor is not a defense against a violation under this section.
5. Notwithstanding the limitations of section 29-04-02, prosecution for a violation of subsection 3 must be commenced within three years of the date of the offense or within three years after the offense is reported to law enforcement, whichever is later.

Approved April 10, 2019

Filed April 11, 2019

# DEBTOR AND CREDITOR RELATIONSHIPS

## CHAPTER 123

### SENATE BILL NO. 2093

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to amend and reenact sections 6-01-09, 6-05-03, and 6-05-28, subsection 3 of section 6-08.1-01, sections 13-04.1-04.1, 13-05-04.1, and 13-08-06, subsection 1 of section 13-09-10, and section 13-11-08 of the North Dakota Century Code, relating to the examination of technology service providers, the capital requirement for trust companies, the examination of trust companies, the definition of a financial institution, surety bond requirements for money brokers and collection agencies, notice requirement for deferred presentment service providers, fees for money transmitters, and reporting requirements for debt-settlement providers; and to repeal sections 13-04.1-05.1, 13-05-05.2, 13-08-05.2, and 13-09-10.1 of the North Dakota Century Code, relating to automatic renewal of license in 2009 for money brokers, automatic renewal of license in 2014 for collection agencies, deferred presentment service providers, and money transmitters.

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

**SECTION 1. AMENDMENT.** Section 6-01-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-01-09. Supervision and examination by commissioner of financial institutions.**

The commissioner shall exercise a constant supervision over the business affairs of all financial corporations, financial institutions, and credit unions, including all out-of-state branches of financial corporations, financial institutions, and credit unions. Either the commissioner or one or more examiners shall visit each financial institution at least once each thirty-six months to examine its affairs and ascertain its financial condition. The commissioner shall inspect and verify the assets and liabilities of the institution and branches to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether the methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing those corporations and institutions, and for that purpose the commissioner may examine the officers, agents, and employees of the corporations and institutions and all persons doing business therewith. The commissioner may examine, or cause to be examined, or review the books and records of any subsidiary corporation of a bank under the commissioner's supervision



and may require the bank to provide information on the holding company that owns the bank. The commissioner may also examine, or cause to be examined, or review the books and records of any technology service provider that provides services to financial corporations, credit unions, and financial institutions under the commissioner's supervision, to evaluate that entity's risk management systems and controls and compliance with applicable laws that affect such services provided to financial corporations, credit unions, and financial institutions. The commissioner shall report the condition of the corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, and the board may take such action as the exigencies may demand.

**SECTION 2. AMENDMENT.** Section 6-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-05-03. Capital stock—Amount—Par value—Paid-in capital required.**

~~The amount of capital stock of any such corporation may not be less than one hundred thousand million dollars, and the same must be divided into shares of one hundred dollars each. No such corporation is authorized to transact any business or exercise any powers as such until the aforesaid minimum amount of capital stock has been subscribed for, and not less than fifty thousand dollars thereof actually has been paid in, invested, and deposited as provided in this chapter with no less than five hundred thousand dollars of that amount in liquid assets.~~ The state banking board may require such additional capital, surplus, and undivided profits as it may determine necessary to properly serve the area and to protect the public interests. The state banking board shall take into consideration peer group ratios, or federal standards and guidelines, when determining whether any additional capital is required.

**SECTION 3. AMENDMENT.** Section 6-05-28 of 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~~ may be made without previous notice to the corporation to be examined. Fees for such examinations must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the department of financial institutions 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 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 financial or moneyed corporations or associations.

**SECTION 4. AMENDMENT.** Subsection 3 of section 6-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Financial institution" means any organization ~~that is physically located in the state which is~~ authorized to do business under state or federal laws relating to

financial institutions, including, without limitation, a bank, including the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.

**SECTION 5. AMENDMENT.** Section 13-04.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-04.1. Surety bond required.**

1. Each licensee shall maintain a surety bond in an amount not less than ~~twenty-five~~twenty-five thousand dollars. The surety bond must be in a form prescribed by the commissioner.
2. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.
3. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

**SECTION 6. AMENDMENT.** Section 13-05-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-04.1. Surety bond required.**

1. Each licensee shall maintain a surety bond in the amount of ~~twenty~~twenty-five thousand dollars.
2. The surety bond must be in a form as prescribed by the commissioner.
3. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.
4. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

**SECTION 7. AMENDMENT.** Section 13-08-06 of the North Dakota Century Code is amended and reenacted as follows:

**13-08-06. 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 licensee a notice~~ conspicuously posted in the place of business of the licensee; and shall provide ~~the same~~ notice to its customers in this state ~~of the license number under which it is operating. This notice must include the license number and instructions for customers to look up the licensee on the nationwide multistate licensing system for license verification.~~
3. A license issued under this section is effective through the remainder of the fiscal year ending ~~June thirtieth~~December thirty-first after the license's date of issuance unless earlier surrendered, suspended, or revoked under this chapter.

**SECTION 8. AMENDMENT.** Subsection 1 of section 13-09-10 of the North Dakota Century Code is amended and reenacted as follows:

1. A licensee under this chapter shall pay an annual renewal fee of ~~four hundred fifty dollars~~, which is not subject to refund. The fee must equal five hundred dollars or one-fourth of one percent of the money transmission dollar volume in North Dakota for the twelve months ending June thirtieth, whichever is greater. The fee may not exceed two thousand five hundred dollars.

**SECTION 9. AMENDMENT.** Section 13-11-08 of the North Dakota Century Code is amended and reenacted as follows:

**13-11-08. Records - Annual reports.**

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the commissioner to determine whether the licensee is complying with this chapter. The records of a licensee may be maintained electronically provided all records can be reproduced upon request of the commissioner and within the required statutory time frame outlined in this section.
2. Before ~~August~~January first of each year, the parent company of each licensee shall file with the commissioner a composite annual report in the form prescribed by the commissioner relating to services provided by licensees.

**SECTION 10. REPEAL.** Sections 13-04.1-05.1, 13-05-05.2, 13-08-05.2, and 13-09-10.1 of the North Dakota Century Code are repealed.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 124

### HOUSE BILL NO. 1204

(Representative Dockter)

AN ACT to create and enact a new section to chapter 13-05 of the North Dakota Century Code, relating to collection agency payment by credit card; and to amend and reenact section 13-05-01.1 of the North Dakota Century Code, relating to definitions applicable to collection agencies.

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

**SECTION 1. AMENDMENT.** Section 13-05-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **13-05-01.1. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Collection agency" means a person ~~or entity who~~that, in the ordinary course of business, engages in debt collection.
2. "Commissioner" means the commissioner of financial institutions.
3. "Communication" means the conveyance or receipt of information regarding or facilitating the collection of a debt, directly or indirectly, to or from any person through any medium.
4. "Credit card payment" means a payment made by a payment card which incurs a credit card interchange fee to the collection agency, regardless of the type of payment card used.
5. "Creditor" means a person ~~who~~that offers or extends credit creating a debt or to ~~whom~~which a debt is owed, ~~but that~~. The term does not include a person to the extent ~~that~~ that person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of that debt.
- 5-6. "Debt" means an obligation or alleged obligation to pay money arising out of a transaction, regardless of whether ~~or not~~ the obligation has been reduced to a judgment.
- 6-7. "Debt collection" means the act of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. ~~As used in this chapter, this~~The term also includes solicitation of debts for the purpose of collection and accepting assignment of debts for the purpose of collection.
- 7-8. "Insolvent" means the point at which a licensed entity's liabilities exceed the entity's tangible assets. ~~For the purpose of this definition, tangible assets,~~ which only include assets that have a physical existence and are capable of being assigned a value.

8-9. "Mortgage servicing company" means a company performing the required duties of a mortgage seller, such as collecting payments, releasing the lien on full payment, and confirming that taxes are paid and insurance is in force.

**SECTION 2.** A new section to chapter 13-05 of the North Dakota Century Code is created and enacted as follows:

**Credit card payment.**

A collection agency may collect or attempt to collect, in addition to the principal amount of a claim, a transaction fee for processing a credit card payment in an amount that does not exceed two and one-half percent of the payment amount if:

1. The transaction fee is not prohibited under section 13-05-02.2;
2. A no-cost payment option is available to the debtor; and
3. The collection agency discloses the no-cost option to the debtor at the same time and in the same manner as the debtor's credit card information is taken.

Approved March 6, 2019

Filed March 7, 2019

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 125

### HOUSE BILL NO. 1336

(Representatives Johnston, Becker, Ertelt, Hoverson, Kasper, Monson, Paulson, Skroch)

(Senators Kannianen, O. Larsen, Luick, Myrdal)

AN ACT to create and enact a new subdivision to subsection 1 of section 14-02.1-02.1 of the North Dakota Century Code, relating to printed information by state department of health; and to amend and reenact subsection 11 of section 14-02.1-02 of the North Dakota Century Code, relating to informed consent requirements before an abortion.

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

**SECTION 1. AMENDMENT.** Subsection 11 of section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

11. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced provided that:
  - a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
    - (1) The name of the physician who will perform the abortion;
    - (2) The abortion will terminate the life of a whole, separate, unique, living human being;
    - (3) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
    - (4) The probable gestational age of the unborn child at the time the abortion is to be performed; and
    - (5) The medical risks associated with carrying her child to term.
  - b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
    - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of that assistance is contained in the printed materials given to her as described in section 14-02.1-02.1;

- (2) That the printed materials given to her and described in section 14-02.1-02.1 describe the unborn child and list agencies that offer alternatives to abortion;
  - (3) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; ~~and~~
  - (4) That she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled; and
  - (5) That it may be possible to reverse the effects of an abortion-inducing drug if she changes her mind, but time is of the essence, and information and assistance with reversing the effects of an abortion-inducing drug are available in the printed materials given to her as described in section 14-02.1-02.1.
- c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her.
  - d. Before the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.
  - e. The physician has not received or obtained payment for a service provided to a patient who has inquired about an abortion or has scheduled an abortion before the twenty-four-hour period required by this section.

<sup>48</sup> **SECTION 2.** A new subdivision to subsection 1 of section 14-02.1-02.1 of the North Dakota Century Code is created and enacted as follows:

Materials including information it may be possible to reverse the effects of an abortion-inducing drug but time is of the essence. The materials must include information directing the patient where to obtain further information and assistance in locating a medical professional who can aid in the reversal of abortion-inducing drugs, such as mifepristone and misoprostol.

Approved March 22, 2019

Filed March 22, 2019

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<sup>48</sup> Section 14-02.1-02.1 was also amended by section 3 of Senate Bill No. 2124, chapter 391.

## CHAPTER 126

### HOUSE BILL NO. 1546

(Representatives Simons, Becker, Ertelt, Magrum, Rohr, Toman)  
(Senators Kannianen, O. Larsen, Luick, Schaible, Wanzek)

AN ACT to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code, relating to prohibition on human dismemberment abortion; to amend and reenact section 2 of chapter 132 of the 2007 Session Laws, relating to the implementation of the prohibition of the performance of abortions; to provide a penalty; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

##### **Prohibition on human dismemberment abortion - Penalty.**

1. For purposes of this section, "human dismemberment abortion" means intentionally dismembering a living unborn child and extracting the unborn child one piece at a time from a uterus, with the purpose of causing the death of an unborn child, through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp the head, arm, leg, spinal cord, internal organ, or other portion of the unborn child's body to cut or rip it off, regardless if the fetal body parts are removed by the same instrument, suction, or other means.
2. Except in the case of a medical emergency, it is a class C felony for an individual to intentionally perform a human dismemberment abortion.
3. A woman upon whom a human dismemberment abortion is performed or attempted to be performed in violation of subsection 2 may not be prosecuted for a violation of subsection 2 or for conspiracy to violate subsection 2.

**SECTION 2. AMENDMENT.** Section 2 of chapter 132 of the 2007 Session laws is amended and reenacted as follows:

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on the date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional ~~thirtieth day after:~~

1. The adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion; or
2. The attorney general certifies to the legislative council the issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion.



**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on the thirtieth day after the adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion, or on the thirtieth day after the attorney general certifies to the legislative council:

1. The issuance of the judgment in any decision of the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit which would allow enforcement of section 1 of this Act; or
2. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 127

### SENATE BILL NO. 2115

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact section 14-08.1-04, subsection 2 of section 14-09-08.1, subsection 4 of section 14-09-08.4, section 14-09-09.32, subsection 8 of section 14-09-25, section 34-15-07, and subsection 6 of section 50-09-08.6 of the North Dakota Century Code, relating to child support; to repeal section 14-09-09.37 of the North Dakota Century Code, relating to child support; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 14-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**14-08.1-04. Duty of state's attorneychild support agency - Sheriff's fees.**

~~Upon request of the county social service board director or the executive director of the department of human services, the state's attorney of any county furnishing public assistance or county general assistance~~The child support agency shall commence any appropriate action or proceeding under sections 14-08.1-02 and 14-08.1-03, in which case fees for filing and, Except for public assistance cases as determined by the child support agency, a sheriff may charge and collect service of process may not be charged or collected~~fees consistent with section 11-15-07.~~

**SECTION 2. AMENDMENT.** Subsection 2 of section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Each party subject to the order shall immediately inform the state disbursement unit of the party's:
  - (1) Social security number;
  - (2) Residential and mailing addresses and any change of address;
  - (3) Telephone number;
  - (4) Motor vehicle operator's license number;
  - (5) Employer's name, address, and telephone number;
  - (6) Electronic mail address; and
  - ~~(6)~~(7)Change of any other condition which may affect the proper administration of this chapter.
- b. Each order for payment of child support must notify each party of the requirements in subdivision a and require the party to provide the

information within ten days from the date of the order or ten days after any change in the information.

- c. In any subsequent child support enforcement or modification action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the court shall deem due process requirements for notice and service to have been met, with respect to the noticed party, by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
- d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.

**SECTION 3. AMENDMENT.** Subsection 4 of section 14-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

4. If a child support ~~order~~obligation sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support ~~order~~obligation to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support ~~order~~obligation, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the ~~order~~obligation sought to be amended, the party seeking amendment must also show a material change of circumstances.

**SECTION 4. AMENDMENT.** Section 14-09-09.32 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.32. Agreements to waive child support.**

1. An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by a court of competent jurisdiction. A copy of the order of approval must be provided to the state disbursement unit. As used in this section, "child support" does not include spousal support.
2. In a judgment for divorce or other relief under this title in any matter in which the child and both of the child's parents do not reside together, a court shall establish a child support obligation unless the child support agency requests the issue of child support be reserved. Notwithstanding subsection 1, the court may issue a stay of any further accruals under a child support order if the court finds the stay would be in the best interests of the child. Avoidance of income withholding or the requirement to make any child support payment through the state disbursement unit is not a proper basis to stay a child support obligation under this subsection. A child support obligation that is stayed under this subsection may be reinstated on a prospective basis as provided under the terms of the stay or at any time by order of the court or

upon affidavit of any party. The party filing the affidavit shall provide a copy of the affidavit to any other party to the action and to the state disbursement unit.

**SECTION 5. AMENDMENT.** Subsection 8 of section 14-09-25 of the North Dakota Century Code is amended and reenacted as follows:

8. The child support agency may suspend or waive judgment interest on an arrearage as part of an amnesty program, as an incentive for satisfying a child support obligation or complying with a payment plan, or if the child support agency determines that the judgment interest is not collectible through commercially reasonable efforts. This subsection applies to judgment interest accruing before July 1, 2005, only if the arrearage is assigned to the child support agency under section 50-09-06.1 or 50-24.1-02.1 or if the obligee provides written consent. Any judgment interest that is suspended or waived under this subsection may be reinstated by a court at any time or by the child support agency if the obligor has failed to comply with a payment plan.

**SECTION 6. AMENDMENT.** Section 34-15-07 of the North Dakota Century Code is amended and reenacted as follows:

**34-15-07. Disposition of civil money penalties - Continuing appropriation.**

A civil money penalty collected under this chapter must be paid into the state treasury for deposit in the general child support collection and disbursement fund and is appropriated to the department on a continuing basis for the purpose of covering losses the department incurs in making child support disbursements as provided under section 14-09-25.

**SECTION 7. AMENDMENT.** Subsection 6 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

6. In a contest under this section, the court ~~must~~shall affirm the action of the state agency to withhold, restrict, or suspend a license unless ~~if~~the court finds that the licensee's delinquency or failure to comply with a subpoena, or an existing payment plan was not willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, is listed on the arrears registry, or is not in compliance with an existing payment plan between the licensee and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willfulstate agency's decisions was arbitrary, unreasonable, or capricious.

**SECTION 8. REPEAL.** Section 14-09-09.37 of the North Dakota Century Code is repealed.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 128

### SENATE BILL NO. 2267

(Senators Hogan, Dever, O. Larsen)  
(Representatives Hager, K. Koppelman, Pyle)

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to information provided to a child support obligor to minimize delinquencies.

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

**SECTION 1.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

#### **Income withholding - Information provided to obligor.**

If a new or amended child support order is issued by a court in a case enforced by a child support agency, the child support agency shall inform the obligor of the possibility the income withholding date may not align with the child support order date and of any affirmative steps the obligor may take to avoid a delinquent payment as a result of this possible misalignment.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 129

### SENATE BILL NO. 2225

(Senators Dever, Oban)  
(Representatives Keiser, Klemin, Kreidt, Longmuir)

AN ACT to amend and reenact section 14-09-10 of the North Dakota Century Code, relating to familial duty to support for health services; to repeal section 50-01-19 of the North Dakota Century Code, relating to familial duty to support for county welfare; to provide for application; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 14-09-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **14-09-10. Reciprocal duty of support for health services - Support of poor.**

It is the duty of the father, the mother,

1. ~~Each parent and every adult child of any person~~ Each parent and every adult who is unable to support oneself, to shall maintain that person ~~adult to the extent of the ability of each. This liability may be enforced by any person furnishing necessities to the person. The promise of an adult child to pay for necessities furnished to the child's parent is binding.~~
2. Except as provided under subsection 3, a creditor may not recover under this duty of support unless the:
  - a. Recovery sought by a creditor is for the furnishing of necessary health services, which may include medical and long-term care services;
  - b. Recovery sought is from a parent or adult child who received a direct benefit from a disqualifying transfer of an asset under section 50-06.2-07 or 50-24.1-02;
  - c. Recovery being sought from this parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and
  - d. Disqualifying transfer occurred within five years of the receipt of the necessary health services or application for medical assistance.
3. A creditor may recover under this duty to support if the:
  - a. Recovery is sought by a creditor for the furnishing of necessary health services, which may include medical and long-term care services;
  - b. Recovery is sought from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting income or assets of the other adult to prevent or avoid payment for necessary health services;

- c. Recovery being sought from the parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and
- d. Bad faith action occurred within five years of the receipt of the necessary health services.

<sup>49</sup> **SECTION 2. REPEAL.** Section 50-01-19 of the North Dakota Century Code is repealed.

**SECTION 3. APPLICATION.** This Act applies to a collection action to enforce liability for furnishing necessities which becomes final on and after the effective date of this Act.

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

Approved March 21, 2019

Filed March 22, 2019

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<sup>49</sup> Section 50-01-19 was amended by section 55 of Senate Bill No. 2124, chapter 391.

## CHAPTER 130

### HOUSE BILL NO. 1395

(Representatives Schauer, Adams, Buffalo, Hager, K. Koppelman, Mitskog, Pyle,  
Satrom)  
(Senator Hogan)

AN ACT to amend and reenact section 14-09-22 of the North Dakota Century Code, relating to requiring evaluations for individuals convicted of child abuse; and to provide a penalty.

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

<sup>50</sup> **SECTION 1. AMENDMENT.** Section 14-09-22 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-09-22. Abuse of child - Penalty.**

1. Except as provided in subsection 2 or 3, a parent, adult family or household member, guardian, or other custodian of any child, who willfully inflicts or allows to be inflicted upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 is guilty of a class C felony except if the victim of an offense under this section is under the age of six years in which case the offense is a class B felony.
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 this section is guilty of a class B felony. Any such person that 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.
3. A person that commits an offense under this section is guilty of a class B felony if the victim suffers permanent loss or impairment of the function of a bodily member or organ, except if the victim of the offense is under the age of six years in which case the offense is a class A felony.
4. For any person who pleads guilty or is convicted of an offense under this section, the court shall include in the sentence an order for the person to complete a parental capacity evaluation, mental health evaluation, and anger management assessment, and to complete treatment recommendations as ordered by the court as a condition of probation.

Approved April 18, 2019

Filed April 19, 2019

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<sup>50</sup> Section 14-09-22 was also amended by section 2 of House Bill No. 1396, chapter 104.



## CHAPTER 131

### SENATE BILL NO. 2051

(Human Services Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 14-09.4 of the North Dakota Century Code, relating to the Uniform Nonparent Custody and Visitation Act; to repeal section 14-09-05.1 of the North Dakota Century Code, relating to grandparental rights of visitation; and to provide for application.

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

**SECTION 1.** Chapter 14-09.4 of the North Dakota Century Code is created and enacted as follows:

##### **14-09.4-01. Definitions.**

As used in this chapter:

1. "Child" means an unemancipated individual who is under eighteen years of age.
2. "Compensation" means wages or other remuneration paid in exchange for care of a child. The term does not include reimbursement of expenses for care of the child, including payment for food, clothing, and medical expenses.
3. "Consistent caretaker" means a nonparent who meets the requirements of subsection 2 of section 14-09.4-03.
4. "Custody" means physical custody, legal custody, or both. The term includes joint custody or shared custody.
5. "Harm to a child" means significant adverse effect on a child's physical, emotional, or psychological well-being.
6. "Legal custody" means the right to make significant decisions regarding a child, including decisions regarding a child's education, health care, and scheduled activity.
7. "Nonparent" means an individual other than a parent of the child, including a grandparent, sibling, or stepparent of the child.
8. "Parent" means an individual recognized as a parent under law of this state other than this chapter.
9. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
10. "Physical custody" means living with a child and exercising day-to-day care of the child.

11. "Record" means information inscribed on a tangible medium, or stored in an electronic or other medium, and is retrievable in perceivable form.
12. "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 a federally recognized Indian tribe.
13. "Substantial relationship with the child" means a relationship between a nonparent and child which meets the requirements of subsection 3 of section 14-09.4-03.
14. "Visitation" means the right to spend time, which may include an overnight stay, with a child who is living with another person.

#### **14-09.4-02. Scope.**

1. Except as otherwise provided in subsection 2, this chapter applies to a proceeding in which a nonparent seeks custody or visitation.
2. This chapter does not apply to a proceeding:
  - a. Between nonparents, unless a parent is a party to the proceeding;
  - b. Pertaining to custody of or visitation with an Indian child as defined in the Indian Child Welfare Act of 1978 [25 U.S.C. 1903(4)], to the extent the proceeding is governed by the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through 196]; and
  - c. Pertaining to a child who is the subject of an ongoing proceeding in any state regarding:
    - (1) Guardianship of the person; or
    - (2) An allegation by a government entity that the child is abused, neglected, dependent, or otherwise in need of care.
3. A nonparent may not maintain a proceeding under this chapter for custody of or visitation with a child solely because the nonparent served as a foster parent of the child.
4. An individual whose parental rights concerning a child have been terminated may not maintain a proceeding under this chapter concerning the child.
5. Relief under this chapter is not available during the period of a custody or visitation order entered under chapter 14-09.3 or other order dealing with custody of or visitation with a child of a deployed parent. A custody or visitation order entered before a parent was deployed remains in effect unless modified by the court.

#### **14-09.4-03. Requirements for order of custody or visitation.**

1. A court may order custody or visitation to a nonparent if the nonparent proves:
  - a. The nonparent:

- (1) Is a consistent caretaker; or
  - (2) Has a substantial relationship with the child and denial of custody or visitation would result in harm to the child; and
- b. An order of custody or visitation to the nonparent is in the best interest of the child.
- 2. A nonparent is a consistent caretaker if the nonparent without expectation of compensation:
  - a. Lived with the child for not less than twelve months, unless the court finds good cause to accept a shorter period;
  - b. Regularly exercised care of the child;
  - c. Made day-to-day decisions regarding the child solely or in cooperation with an individual having physical custody of the child; and
  - d. Established a bonded and dependent relationship with the child with the express or implied consent of a parent of the child, or without the consent of a parent if no parent has been able or willing to perform parenting functions.
- 3. A nonparent has a substantial relationship with the child if:
  - a. The nonparent:
    - (1) Is an individual with a familial relationship with the child by blood or law; or
    - (2) Formed a relationship with the child without expectation of compensation; and
  - b. A significant emotional bond exists between the nonparent and the child.

#### **14-09.4-04. Presumption for parental decision.**

- 1. In an initial proceeding under this chapter, a decision by a parent regarding a request for custody or visitation by a nonparent is presumed to be in the best interest of the child.
- 2. Subject to section 14-09.4-14, a nonparent has the burden to rebut the presumption under subsection 1 by clear and convincing evidence of the facts required by subsection 1 of section 14-09.4-03. Proof of unfitness of a parent is not required to rebut the presumption under subsection 1.

#### **14-09.4-05. Commencement of proceeding - Jurisdiction.**

A nonparent may commence a proceeding by filing a petition under section 14-09.4-06 in the court having jurisdiction to determine custody or visitation under chapter 14-14.1.

**14-09.4-06. Verified petition.**

1. A nonparent shall verify a petition for custody or visitation under penalty of perjury and allege facts showing the nonparent:
  - a. Meets the requirements of a consistent caretaker of the child; or
  - b. Has a substantial relationship with the child and denial of custody or visitation would result in harm to the child.
2. A petition under subsection 1 must state the relief sought and allege specific facts showing:
  - a. The duration and nature of the relationship between the nonparent and the child, including the period the nonparent lived with the child and the care provided, if any;
  - b. The content of any agreement between the parties to the proceeding regarding care of the child and custody of or visitation or other contact with the child;
  - c. A description of any previous attempt by the nonparent to obtain custody of or visitation or other contact with the child;
  - d. The extent to which the parent is willing to permit the nonparent to have custody of or visitation or other contact with the child;
  - e. Information about compensation or expectation of compensation provided to the nonparent in exchange for care of the child;
  - f. Information required to establish the jurisdiction of the court under chapter 14-14.1;
  - g. The reason the requested custody or visitation is in the best interest of the child, applying the factors in section 14-09.4-11; and
  - h. If the nonparent alleges a substantial relationship with the child, the reason denial of custody or visitation to the nonparent would result in harm to the child.
3. If an agreement described in subdivision b of subsection 2 is in a record, the nonparent shall attach a copy of the agreement to the petition.

**14-09.4-07. Sufficiency of petition.**

1. The court shall determine based on the petition under section 14-09.4-06 whether the nonparent has pleaded a prima facie case that the nonparent:
  - a. Is a consistent caretaker; or
  - b. Has a substantial relationship with the child and denial of custody or visitation would result in harm to the child.
2. If the court determines under subsection 1 the nonparent has not pleaded a prima facie case, the court shall dismiss the petition.

**14-09.4-08. Notice.**

On commencement of a proceeding, the nonparent shall give notice to each:

1. Parent of the child who is the subject of the proceeding;
2. Person having custody of the child;
3. Individual having court-ordered visitation with the child; and
4. Attorney, guardian ad litem, or similar representative appointed for the child.

**14-09.4-09. Appointment - Interview of child - Court services - Limitation.**

In the manner and to the extent authorized by this title in a family law proceeding other than under this chapter, the court may:

1. Appoint an attorney, guardian ad litem, or similar representative for the child;
2. Interview the child;
3. Require the parties to participate in mediation or another form of alternative dispute resolution, but a party who has been the victim of domestic violence, sexual assault, stalking, or other crime against the individual by another party to the proceeding may not be required to participate.
4. Order an evaluation, investigation, or other assessment of the child's circumstances and the effect on the child of ordering or denying the requested custody or visitation or modifying a custody or visitation order; and
5. Allocate payment between the parties of a fee for a service ordered under this section. Public funds may not be used to provide services under this section.

**14-09.4-10. Emergency order.**

On finding that a party or a child who is the subject of a proceeding is in danger of imminent harm, the court may expedite the proceeding and issue an emergency order.

**14-09.4-11. Best interest of child.**

In determining whether an order of custody or visitation to a nonparent is in the best interest of a child, the court shall consider:

1. The nature and extent of the relationship between the child and the parent;
2. The nature and extent of the relationship between the child and the nonparent;
3. The views of the child, taking into account the age and maturity of the child;
4. Past or present conduct by a party, or individual living with a party, which poses a risk to the physical, emotional, or psychological well-being of the child;
5. The likely impact of the requested order on the relationship between the child and the parent;

6. The applicable factors in section 14-09-06.2; and
7. Any other factor affecting the best interest of the child.

**14-09.4-12. Presumption arising from child abuse, child neglect, domestic violence, sexual assault, or stalking.**

1. The court shall presume that ordering custody or visitation to a nonparent is not in the best interest of the child if the court finds that the nonparent, or an individual living with the nonparent, has committed child abuse, child neglect, domestic violence, sexual assault, stalking, or comparable conduct in violation of law of this state or another state.
2. A finding that the conduct specified in subsection 1 occurred must be based on:
  - a. Evidence of a conviction in a criminal proceeding or final judgment in a civil proceeding; or
  - b. Proof by a preponderance of the evidence.
3. A nonparent may rebut the presumption under subsection 1 by proving by clear and convincing evidence that ordering custody or visitation to the nonparent will not endanger the health, safety, or welfare of the child.

**14-09.4-13. Order of custody or visitation.**

1. If a nonparent seeks custody, the court may order:
  - a. Primary residential responsibility to the nonparent;
  - b. Joint custody to the nonparent and a parent or other party; or
  - c. Visitation to the nonparent.
2. If a nonparent seeks visitation only, the court may not order custody to the nonparent seeking visitation.

**14-09.4-14. Modification of custody or visitation.**

1. On motion, and subject to subsections 3 and 4, the court may modify a final custody or visitation order under section 14-09.4-13 on a showing by a preponderance of the evidence that:
  - a. A substantial and continuing change in circumstance has occurred relevant to the custody of or visitation with the child; and
  - b. Modification is in the best interest of the child.
2. Except as otherwise provided in subsections 3 and 4, if a nonparent has rebutted the presumption under section 14-09.4-04 in an initial proceeding, the presumption remains rebutted.
3. If a motion is filed to modify an order of visitation under this chapter to obtain an order of custody, the nonparent must rebut the presumption under section 14-09.4-04.

4. On agreement of the parties, the court may modify a custody or visitation order, unless the court finds the agreement is not in the best interest of the child.

**14-09.4-15. Findings of fact and conclusions of law.**

When issuing a final order of custody or visitation, the court shall make findings of fact and conclusions of law on the record in support of its decision or, if the petition is dismissed under section 14-09.4-07, state the reasons for the dismissal.

**14-09.4-16. Effect of adoption of child by stepparent or other relative.**

If a child is adopted by a stepparent or other relative of the child, an order of custody or visitation to a nonparent remains in effect and is not changed by the adoption unless modified, after notice to all parties to the custody or visitation proceeding, by the court that entered the order or the court that granted the adoption.

**14-09.4-17. Expense of facilitating visitation.**

The court may issue an order allocating responsibility between the parties for payment of the expense of facilitating visitation, including transportation expenses.

**14-09.4-18. Law governing child support.**

The authority of a court to award child support payable to or by a nonparent is governed by chapter 14-09.

**14-09.4-19. Equitable right or remedy.**

This chapter does not preclude the recognition of an equitable right or remedy for a psychological parent under law of this state other than this chapter.

**14-09.4-20. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**SECTION 2. REPEAL.** Section 14-09-05.1 of the North Dakota Century Code is repealed.

**SECTION 3. APPLICATION.** Section 1 of this Act applies to a proceeding commenced before the effective date of this Act in which a final order has not been entered and to a proceeding commenced on or after the effective date of this Act.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 132

### HOUSE BILL NO. 1038

(Legislative Management)  
(Judiciary Committee)

AN ACT to amend and reenact section 14-15.1-05 of the North Dakota Century Code, relating to required reports of a child placing agency.

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

**SECTION 1. AMENDMENT.** Section 14-15.1-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **14-15.1-05. Report of agreements and disbursements.**

Prior to a hearing under this chapter, a report of agreements and disbursements must be filed with the court and served upon the department. The report must include the following:

1. A statement of all agreements, whether oral or written, entered into between any of the parties to an action under this chapter, which relate in any way to the future conduct of any party with respect to the child. If oral agreements are reported, the substance of such agreements must be set forth in the report and a copy of the report must be served on all parties to the oral agreement. Copies of all written agreements must be attached to the report.
2. A full accounting in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the identified adoptive parent in connection with proceedings under this chapter. The report must show any expenses incurred in connection with:
  - a. The birth of the child.
  - b. Placement of the child with the identified adoptive parent.
  - c. Medical or hospital care received by the birth parent or by the child prior to or after the child's birth.
  - d. Services relating to the petition for relinquishment or the placement of the child which were received by or on behalf of a birth parent, identified adoptive parent, or any other person.
3. ~~A statement of each person furnishing information contained in the report by which that person attests to the correctness and truthfulness of the information furnished.~~

Approved March 13, 2019

Filed March 14, 2019



# EDUCATION

## CHAPTER 133

### SENATE BILL NO. 2081

(Government and Veterans Affairs Committee)  
(At the request of the Department of Trust Lands)

AN ACT to amend and reenact section 15-03-16 of the North Dakota Century Code, relating to a continuing appropriation for investments controlled by the board of university and school lands.

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

**SECTION 1. AMENDMENT.** Section 15-03-16 of the North Dakota Century Code is amended and reenacted as follows:

#### **15-03-16. Continuing appropriation for investments.**

There is appropriated annually the amounts necessary to pay costs related to investments controlled by the board of university and school lands, including investment management fees, trustee fees, consulting fees, custodial fees, and the cost of capitalized performance measurement fees; expenses associated with money manager searches and onsite audits and reviews of investment managers; expenses associated with building repairs, maintenance, and renovations as approved by the board; and payments in lieu of taxes for the building and grounds. Each payment must be made from the trust fund for which the investment is made cost was incurred.

Approved March 28, 2019

Filed March 29, 2019

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## CHAPTER 134

### SENATE BILL NO. 2082

(Agriculture Committee)

(At the request of the Department of Trust Lands)

AN ACT to repeal sections 15-04-02 and 15-04-04 of the North Dakota Century Code, relating to cultivated lands for summer fallow.

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

**SECTION 1. REPEAL.** Sections 15-04-02 and 15-04-04 of the North Dakota Century Code are repealed.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 135

### HOUSE BILL NO. 1120

(Representatives Lefor, Schatz, Steiner)  
(Senators Elkin, Wardner)

AN ACT to authorize the state board of higher education to convey the arts building at Dickinson state university; and to declare an emergency.

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

**SECTION 1. TRANSFER OF LAND AUTHORIZED - DICKINSON STATE UNIVERSITY ARTS BUILDING.** The state of North Dakota, by and through the state board of higher education, may convey certain real property known as the arts building, 1031 west villard street, lots 6 through 14, block 26, in the records of the city of Dickinson, if determined appropriate by the state board of higher education. If any of the real property authorized to be conveyed under this section is conveyed, the terms of the conveyance must be determined by the state board of higher education or a designee of the board and must include repayment of the investment in improvements to the building made by the current lessee. The amount of the investment must be determined by comparing the appraised value of the building before the improvements were made and the appraised value of the building after the improvements were made. Sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act.

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

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 136

### HOUSE BILL NO. 1171

(Representatives Grueneich, Blum, Dockter, Headland, Howe, Mitskog, Pollert,  
Satrom)  
(Senators Cook, Wanzek)

AN ACT to create and enact two new sections to chapter 15-10 of the North Dakota Century Code, relating to the development and implementation of a skilled workforce student loan repayment program and a skilled workforce scholarship program; to provide continuing appropriations; to provide for transfers; to provide for reports to the legislative management; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

#### **Skilled workforce student loan repayment program - Skilled workforce student loan repayment program fund - Continuing appropriation - Report.**

1. There is created in the state treasury the skilled workforce student loan repayment program fund. The fund consists of moneys transferred into the fund by the legislative assembly, matching funds received, and loan repayments. Moneys in the fund are appropriated to the state board of higher education on a continuing basis for the purpose of distributing student loan repayment grants directly to the Bank of North Dakota or other participating lender to repay outstanding student loan principal balances for eligible applicants.
2. The state board of higher education shall adopt policies and procedures to develop, implement, promote, and administer a skilled workforce student loan repayment program in cooperation with the Bank of North Dakota and the North Dakota workforce development council with the intent of attracting and retaining individuals for professional or technical skills in high demand in this state.
3. The North Dakota workforce development council in cooperation with job service North Dakota shall use available labor market information to determine annually the eligible high-demand professional and technical skills and emerging occupations in this state.
4. The state board of higher education and the North Dakota workforce development council shall compile a list of qualifying educational programs annually. Qualifying educational programs must pertain to the professional and technical skills and emerging occupations in high demand in this state, as determined under subsection 3. Qualifying educational programs may include degree or certificate programs.
5. Graduates of qualifying educational programs from institutions or entities in this state may apply for the skilled workforce student loan repayment program.

- To be eligible to receive student loan repayment grants under the program, the applicant:
- a. Must have successfully completed a qualifying educational program from an eligible institution of higher education;
  - b. Must have a student loan with the Bank of North Dakota or other participating lender;
  - c. Following completion of a qualifying educational program, must reside and work in this state in an eligible high-demand or emerging occupation; and
  - d. Must have met and shall continue to meet any requirements established by rule.
6. The state board of higher education shall adopt rules to ensure compliance with residency and occupation requirements after completion of the qualifying educational program.
  7. The state board of higher education shall distribute student loan repayment grants from the skilled workforce student loan repayment program fund directly to the Bank of North Dakota or other participating lender to repay outstanding student loan principal balances for eligible applicants. The maximum annual student loan repayment grant amount for which an applicant may qualify is five thousand six hundred sixty-seven dollars, or one-third of the applicant's outstanding student loan principal balance upon initial application for the program, whichever is less. The maximum total student loan repayment grant amount for which any applicant may qualify is seventeen thousand dollars.
  8. If an individual is receiving loan forgiveness under any other provision, the individual may not receive a student loan repayment grant under this section during the same application year. An individual who received a skilled workforce scholarship under section 2 of this Act is not eligible for loan forgiveness under this section.
  9. The skilled workforce student loan repayment program must be a joint public and private effort. The state board of higher education shall provide one dollar of funding for each one dollar of funding raised from the private sector. Any matching funds received must be deposited in the skilled workforce student loan repayment program fund.
  10. The state board of higher education shall provide a biennial program report to the legislative management by September first of each even-numbered year. The report must include information regarding:
    - a. The eligible high-demand professional and technical skills and emerging occupations;
    - b. The qualifying educational programs;
    - c. The number of applicants, eligible applicants, and applicants receiving awards;
    - d. The amount of private funding raised; and

- e. The average and total amounts awarded under the program.

**SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Skilled workforce scholarship program - Skilled workforce scholarship fund - Continuing appropriation - Report.**

1. There is created in the state treasury the skilled workforce scholarship fund. The fund consists of moneys transferred into the fund by the legislative assembly, matching funds received, and scholarship repayments. Moneys in the fund are appropriated to the state board of higher education on a continuing basis for the purpose of providing grants to institutions of higher education related to skilled workforce scholarships. Institutions of higher education include institutions under the control of the state board of higher education, North Dakota nonpublic accredited institutions of higher education, and tribally controlled community colleges.
2. The state board of higher education shall adopt policies and procedures to develop, implement, promote, and administer a skilled workforce scholarship program in cooperation with the Bank of North Dakota and the North Dakota workforce development council with the intent of attracting and retaining individuals for professional or technical skills in high demand in this state.
3. The North Dakota workforce development council in cooperation with job service North Dakota shall use available labor market information to determine annually the eligible high-demand professional and technical skills and emerging occupations in this state.
4. The state board of higher education and the workforce development council shall compile a list of qualifying educational programs annually. Qualifying educational programs must be able to be completed within four semesters or six quarters and must pertain to the professional and technical skills and emerging occupations in high demand in this state, as determined under subsection 3. Qualifying educational programs may include degree or certificate programs.
5. Individuals enrolled in a qualifying educational program in this state may apply for a scholarship under this section. Scholarships are limited to the amount charged each quarter, semester, or term by the educational institution for the tuition, fees, books, and supplies required for the qualifying educational program. The scholarships are intended to supplement any other scholarship or financial aid grant received by a student to assist the student with the costs of the qualifying educational program. An individual may not receive more than seventeen thousand dollars in total under this section.
6. To be eligible for a scholarship under this section, a student must be enrolled full time in an eligible program and maintain a 2.5 cumulative grade point average, based on a 4.0 grading system, or maintain academic progress in the program according to program requirements. A student may not receive scholarships under this section for more than the equivalent of four semesters of full-time enrollment or six quarters of full-time enrollment.
7. Upon completion of a qualifying educational program, a student who received a scholarship under this section must reside and work in this state in an eligible high-demand or emerging occupation for a minimum of three years.

8. An individual shall repay the scholarship pursuant to the terms in the individual's scholarship award agreement if the individual fails to maintain a 2.5 cumulative grade point average while enrolled, discontinues attendance before the completion of any semester or quarter for which a scholarship has been received, or fails to reside and work in this state in an eligible high-demand or emerging occupation for at least three years following degree or certificate completion.
9. Each quarter, semester, or term, the state board of higher education shall distribute grants to institutions of higher education to provide the amounts necessary for the scholarships awarded to the students enrolled in each institution.
10. The skilled workforce scholarship program must be a joint public and private effort. The state board of higher education may distribute grants only to the extent that the private sector has provided one dollar of matching funds for each dollar of funding provided by the state. Any matching funds received must be deposited in the skilled workforce scholarship fund.
11. The state board of higher education shall provide a biennial program report to the legislative management by September first of each even-numbered year. The report must include information regarding:
  - a. The eligible high-demand professional and technical skills and emerging occupations;
  - b. The qualifying educational programs;
  - c. The number of applicants, eligible applicants, and applicants receiving awards;
  - d. The amount of private funding raised; and
  - e. The average and total amounts awarded under the program.

**SECTION 3. TRANSFER - BANK OF NORTH DAKOTA - SKILLED WORKFORCE STUDENT LOAN REPAYMENT PROGRAM FUND.** The Bank of North Dakota shall transfer the sum of \$3,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the skilled workforce student loan repayment program fund during the period beginning with the effective date of this Act, and ending June 30, 2021.

**SECTION 4. TRANSFER - BANK OF NORTH DAKOTA - SKILLED WORKFORCE SCHOLARSHIP FUND.** The Bank of North Dakota shall transfer the sum of \$3,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the skilled workforce scholarship fund during the period beginning with the effective date of this Act, and ending June 30, 2021.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 137

### SENATE BILL NO. 2147

(Senators Erbele, Klein, Luick)  
(Representatives Fisher, Headland, Trottier)

AN ACT to amend and reenact section 15-10-43 of the North Dakota Century Code, relating to admission committee members for the veterinary medical education program.

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

**SECTION 1. AMENDMENT.** Section 15-10-43 of the North Dakota Century Code is amended and reenacted as follows:

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

1. In addition to any contracts under section 15-10-28.2, the state board of higher education may contract with Kansas state university to provide an opportunity for up to five eligible students to enroll in the veterinary medical education program at Kansas state university.
2. Eligible students must be residents of this state and must have been selected for enrollment by an admissions committee consisting of one faculty member ~~from the department of veterinary and microbiological sciences~~appointed by the vice president for agricultural affairs at North Dakota state university, one veterinarian practicing in this state, one member of the legislative assembly, and one livestock producer, all of whom must be appointed by the legislative management, and the chairman of the admissions committee at the Kansas state university school of veterinary medicine. The legislative management and the chairman of the admissions committee at the Kansas state university school of veterinary medicine may select an alternative for each of the designated positions to serve as necessary.
3. The admissions committee shall determine the criteria to be used in the selection of eligible students, with eligible students interested in large animal veterinary medicine receiving a priority.

Approved March 19, 2019

Filed March 20, 2019



## CHAPTER 138

### SENATE BILL NO. 2320

(Senators Holmberg, Davison)

(Representatives Becker, K. Koppelman, Mock, Schreiber-Beck)

AN ACT to create and enact chapter 15-10.4 of the North Dakota Century Code, relating to free speech at institutions under the control of the state board of higher education.

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

**SECTION 1.** Chapter 15-10.4 of the North Dakota Century Code is created and enacted as follows:

##### **15-10.4-01. Definitions.**

As used in this chapter:

1. "Constitutional time, place, and manner restrictions" means restrictions on the time, place, and manner of free speech which do not violate the First Amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota and which are reasonable, content- and viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest, and leave open alternative channels for the communication of the information or message.
2. "Faculty" means an individual, regardless of whether the individual is compensated by an institution, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching, including tenured and nontenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors, and those in comparable positions. "Faculty" does not mean an individual whose primary responsibilities are administrative or managerial, unless the individual also teaches at least one credit-hour.
3. "Free speech" means speech, expression, and assemblies protected by the First Amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota, including all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, carrying signs, displays, or circulating petitions. "Free speech" does not include the promotion, sale, or distribution of a product or service, unless the promotion, sale, or distribution of the product or service is incidental to the exercise of free speech.
4. "Institution" means an institution under the control of the state board of higher education.
5. "Student" means an individual enrolled in at least one course offered by an institution.

6. "Student organization" means an officially recognized organization at an institution, or an organization seeking official recognition, comprised of admitted students receiving or are seeking to receive benefits through the institution.

**15-10.4-02. Adoption of campus free speech policy.**

By August 27, 2019, the state board of higher education and each institution shall adopt a policy that:

1. Protects students' rights to free speech, assembly, and expression;
2. Permits institutions to establish and enforce reasonable and constitutional time, place, and manner restrictions on free speech, assembly, and expression;
3. Permits students, faculty, or student organizations to invite guest speakers or groups to present regardless of the viewpoint or content of the anticipated speech of the guest speaker or group; and
4. Protects the academic freedom and free speech rights of faculty while adhering to guidelines established by the American association of university professors.

Upon adoption of the policies under this section, the state board of higher education shall provide a copy of the policies to the legislative management.

Approved April 15, 2019

Filed April 15, 2019

## CHAPTER 139

### SENATE BILL NO. 2249

(Senators Holmberg, Bekkedahl, Meyer)  
(Representatives Mock, J. Nelson, Porter)

AN ACT to create and enact sections 15-11-40 and 57-51.1-07.9 of the North Dakota Century Code, relating to the state energy research center and the state energy research center fund; to provide a continuing appropriation; to provide a report; and to provide an expiration date.

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

**SECTION 1.** Section 15-11-40 of the North Dakota Century Code is created and enacted as follows:

##### **15-11-40. State energy research center - Report.**

1. The state energy research center at the university of North Dakota energy and environmental research center is created for the purpose of conducting exploratory, transformational, and innovative research that advances future energy opportunities and benefits the state's economy and environment through:
  - a. Exploratory research of technologies and methodologies that facilitate the prudent development, and clean and efficient use, of the state's energy resources;
  - b. Greater access to energy experts for timely scientific and engineering studies to support the state's interests; and
  - c. Education and outreach related to the state's energy resources.
2. The state energy research center shall report all research activities and accomplishments annually to the interim legislative energy development and transmission committee and to the industrial commission. Upon request, the state energy research center shall report all research activities and accomplishments to the appropriations committees of the legislative assembly.
3. To effectuate the purposes of this section, the energy and environmental research center may:
  - a. Select the research topics and projects to be pursued;
  - b. Enter contracts or agreements with other North Dakota institutions of higher education to support select research topics and projects;
  - c. Enter contracts or agreements with federal, private, and nonprofit organizations to carry out selected research topics and projects; and
  - d. Accepting donations, grants, contributions, and gifts from any source to carry out the selected research topics and projects.

4. The state energy research center may not conduct research or pursue projects that will result in the exploration, storage, treatment, or disposal of high-level radioactive waste in North Dakota.

**SECTION 2.** Section 57-51.1-07.9 of the North Dakota Century Code is created and enacted as follows:

**57-51.1-07.9. State energy research center fund - Continuing appropriation.**

The state energy research center fund is a special fund in the state treasury. Before depositing oil and gas gross production tax and oil extraction tax revenues under section 57-51.1-07.5, one percent of the revenues must be deposited monthly into the state energy research center fund, up to five million dollars per biennium. All moneys deposited in the state energy research center fund and interest on all such moneys are appropriated on a continuing basis to the industrial commission for distribution to the state energy research center. The state energy research center shall use the funds in accordance with section 15-11-40.

**SECTION 3. EXPIRATION DATE.** This Act is effective through June 30, 2023, and after that date is ineffective.

Approved April 23, 2019

Filed April 24, 2019

**CHAPTER 140****SENATE BILL NO. 2164**

(Senators Vedaa, Clemens, Kreun, O. Larsen, Osland)  
(Representative Vetter)

AN ACT to create and enact a new section to chapter 15-18.2 of the North Dakota Century Code, relating to contents of tuition and fees statements.

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

**SECTION 1.** A new section to chapter 15-18.2 of the North Dakota Century Code is created and enacted as follows:

**Statement of tuition and fees - Contents of statement.**

Each tuition and fee billing statement provided to a student must include information identifying the average dollar amount of state aid per student per semester the institution receives under this chapter.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 141

### SENATE BILL NO. 2216

(Senator Schaible)  
(Representative Owens)

AN ACT to create and enact a new section to chapter 15-19 of the North Dakota Century Code, relating to definitions; to amend and reenact sections 15-19-01, 15-19-02, 15-19-02.1, 15-19-06, 15-19-08, and 15-20.1-03 of the North Dakota Century Code, relating to distance education; and to repeal sections 15-19-03 and 15-19-04 of the North Dakota Century Code, relating to authorization of enrollments to the center for distance education by a superintendent of a school and advertising.

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

**SECTION 1. AMENDMENT.** Section 15-19-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **15-19-01. ~~Distance~~North Dakota center for distance education courses - Establishment - Enrollment of students - Courses of instruction.**

The state shall provide ~~distance education~~kindergarten through grade twelve courses, comprehensive educational support, and high school diplomas through the center for distance education under the following provisions:

- ~~1. A complete curriculum by distance education which has been specifically determined by prescribed by state-mandated education accreditation entities which meets the requirements for digital education the superintendent of public instruction as proper and suitable for instruction under distance education methods, such determination and approval to be made not less than once in each school year, must be maintained upon the campus of one of the state institutions of higher education has determined to be appropriate.~~
- ~~2. Unless specifically excused in writing upon the course application forms by the~~A superintendent or an administrator of the~~a~~ school ~~approving~~may deny the enrollment application, ~~or of a student in that district at the center for distance education except~~ as provided in subsection 5, all students under the age of sixteen taking advantage of the provisions of this chapter must be required to attend their local district schools and to study their distance education lessons under the supervision of a local supervisor. If not required to attend their local schools, their work may be done at a place designated by the state director. If in attendance at a local school, students must be supplied with desk space in their respective school without charge and shall attend school regularly and be under the same disciplinary supervision of the teachers as the other school students.
3. The center for distance education may provide services to persons who are not North Dakota residents.
- ~~4. Distance~~Center for distance education students shall pay for ~~books and materials used by them, postage required to mail reports to the center, and~~

other fees as may be prescribed by the state ~~director~~board for career and technical education.

5. Students exempt from the compulsory school attendance laws pursuant to subdivision e of subsection 1 of section 15.1-20-02 may enroll in distance education courses offered through the center for distance education. These students may study their center for distance education lessons in their learning environment under the supervision of a parent. ~~The tests for the distance education study must be administered by an individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and employed either by the public school district in which the parent resides or a state-approved private or nonpublic school.~~

**SECTION 2.** A new section to chapter 15-19 of the North Dakota Century Code is created and enacted as follows:

**Definitions.**

In this chapter, unless the context otherwise requires:

1. "Administration" includes the leadership of the center for distance education.
2. "Board" means the state board for career and technical education.
3. "Center" means the North Dakota center for distance education.
4. "Director" means the director and executive officer of the department of career and technical education.

**SECTION 3. AMENDMENT.** Section 15-19-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-02. Administration –~~Director of center~~Center for distance education - Appointment and duties.**

The program of and all activities related to the center for distance education are the responsibility of the center for distance education and under the ~~supervision~~authority of the ~~educational technology council~~state board for career and technical education. ~~The educational technology council shall~~director of the department of career and technical education shall hire a state director of~~administration and staff for the center for distance education who must be classified under the state personnel merit system. The director~~administration of the center shall carry out the director's responsibilities in the~~administration of~~operating the center for distance education in the manner approved by the educational technology councilstate board for career and technical education, under the supervision of the director of the department of career and technical education, and compliant with requirements established by the superintendent of public instruction and the education standards and practices board for public school administrators and teachers. The state board for career and technical education shall administer the responsibilities of the board of a school district relating to the center for distance education.

**SECTION 4. AMENDMENT.** Section 15-19-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-02.1. Distance education clearinghouse.**

The ~~director of the administration of the~~ center for distance education shall establish a clearinghouse for online courses delivered to North Dakota schools for the purpose of providing:

1. A list of the online courses and providers for all North Dakota schools to access.
2. Awareness of online courses available in new and emerging careers.
3. A list of comparative prices for online courses and other online services.
4. Awareness of the differences between technological innovation and learning innovation.

**SECTION 5. AMENDMENT.** Section 15-19-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-06. Special funds - Deposit of collections - Transfers from general fund appropriations.**

1. A special operating fund for the center for distance education must be maintained within the state treasury and all income and fees collected by the center for distance education from any source must be remitted monthly by the director to the state treasurer and credited to the special operating fund. All expenditures from the fund must be within the limits of legislative appropriations and must be made upon vouchers, signed and approved by the ~~technology director appointed by the educational technology council~~ director. Upon approval of the vouchers by the office of the budget, warrant-checks must be prepared by the office of management and budget. ~~The state treasurer shall make periodic transfers upon order of the director of the office of management and budget from the center for distance education general fund appropriation to the special operating fund whenever its balance falls so low as to require supplementation.~~
2. ~~The educational technology council may establish an administrative operational fund, of not to exceed ten thousand dollars, out of the special operating fund for the center for distance education. The administrative operational fund must be deposited in the Bank of North Dakota and may be drawn upon by the state director of the center for distance education for the payment of necessary expenses in the administration and operation of the center for distance education within the limits and rules prescribed by the educational technology council. The director shall submit a full, minute, and itemized statement of every expenditure made during the month to the council in accordance with the rules adopted by the council, and thereafter the council may periodically authorize additional transfers to the administrative operational fund, but the balance in the fund may never exceed ten thousand dollars, and any unencumbered balance at the end of any biennium must revert to the state treasury. The administrative operational fund may not be used to pay salaries or expenses of the director.~~
3. ~~The educational technology council~~ state board for career and technical education may establish an endowment and scholarship fund to provide financial grants to students enrolled in courses offered through the center for distance education. The endowment and scholarship fund may consist only of those funds specifically appropriated by the legislative assembly and property received by the ~~council~~ or the center for distance education as a gift, devise,



or bequest. Any gift, devise, or bequest of property received by the ~~council~~ or center for distance education which is designated by the ~~council~~ state board for career and technical education and donor for the endowment and scholarship fund must be deposited in the scholarship fund at the Bank of North Dakota. ~~The state director of the center for distance education may draw only on the interest earned by the scholarship fund for the award of scholarships within the limits and rules adopted by the educational technology council. The interest earned by the scholarship fund is appropriated to the center for distance education. The center for distance education may draw on the endowment and scholarship fund for the award of endowments and scholarships within the limits and rules adopted by the state board for career and technical education.~~

**SECTION 6. AMENDMENT.** Section 15-19-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-08. Distance education worksupport and services.**

The amount of money appropriated by the legislative assembly for distance education worksupport and services for a biennium, or so much thereof as may be necessary, must be expended first for work provided by distance education as determined by the center for distance education and approved by the state board for career and technical education.

**SECTION 7. AMENDMENT.** Section 15-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-20.1-03. Powers and duties of state board relating to career and technical education.**

The state board shall have all authority necessary to cooperate with the United States department of education or other department or agency of the United States of America in the administration of acts of Congress relating to career and technical education, including the following powers and duties:

1. To administer any legislation enacted by the legislative assembly of this state pursuant to or in conformity with acts of Congress relating to career and technical education.
2. To administer the funds provided by the federal government and by this state for the promotion of career and technical education and to contract with:
  - a. Any public or private institution or agency, board of trustees of any agricultural and training school, or school district of this state; or
  - b. Any public or private institution or agency, or political subdivision, of another state.
3. To formulate plans for the promotion of career and technical education in such subjects as are an essential and integral part of the public school system of education in this state.
4. To provide for the preparation of teachers.
5. To fix the compensation of such officers and assistants as may be necessary to administer the federal acts and the provisions of this chapter relating to

career and technical education and to pay the same and other necessary expenses of administration from any funds appropriated for such purpose.

6. To make studies and investigations relating to career and technical education.
7. To promote and aid in the establishment of schools, departments, or classes, and to cooperate with local communities in the maintenance of career and technical education schools, departments, or classes.
8. To prescribe the qualifications and provide for the certification of teachers, directors, and supervisors.
9. To cooperate with governing bodies of school districts and with organizations and communities in the maintenance of classes for the preparation of teachers, directors, and supervisors of career and technical education, to maintain classes for such purposes under its own direction and control, and to establish and control, by general regulations, the qualifications to be possessed by persons engaged in the training of career and technical education teachers.
10. To coordinate new and existing farm management programs offered by any state agency or entity.
11. To create and expand marketing clubs as adjuncts to new and existing farm management programs.
12. To administer and supervise the program and all activities of the center for distance education.

**SECTION 8. REPEAL.** Sections 15-19-03 and 15-19-04 of the North Dakota Century Code are repealed.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 142

### HOUSE BILL NO. 1044

(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

AN ACT to amend and reenact section 15-39.1-34 of the North Dakota Century Code, relating to Internal Revenue Code compliance.

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

**SECTION 1. AMENDMENT.** Section 15-39.1-34 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-39.1-34. Internal Revenue Code compliance.**

1. The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code, as amended, and regulations adopted pursuant to those provisions as they apply to governmental plans.
2. Pursuant to the rollover rules under section 401(a)(31) of the Internal Revenue Code, a distributee may elect to have an eligible rollover distribution, as defined in section 402(f)(2)(A) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee.
  - a. The definition of eligible retirement plan also applies in the case of a distribution to an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code.
  - b. Any portion of a distribution that consists of after-tax employee contributions not included in gross income may not be transferred except to an individual retirement account or individual retirement annuity described in section 408 or 408A of the Internal Revenue Code or to a qualified plan or an annuity contract described in sections 401(a) and 403(b) of the Internal Revenue Code, respectively, which agrees to separately account for such amounts, including separately accounting for the portion of the distribution which is included in gross income and the portion of the distribution which is not so included.
  - c. For purposes of this section, "distributee" includes a nonspouse beneficiary of a deceased member; except in the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or individual retirement annuity described in section 408 or 408A of the Internal Revenue Code which is established on behalf of the nonspouse beneficiary and will be treated as an inherited individual retirement account or inherited individual retirement annuity pursuant to section 402(c)(11) of the Internal Revenue Code.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 143

### SENATE BILL NO. 2202

(Senators Sorvaag, Meyer, Poolman, Robinson)  
(Representatives M. Johnson, Pyle)

AN ACT to amend and reenact section 15-62.4-02 of the North Dakota Century Code, relating to criteria governing the award procedures under the student financial assistance program.

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

**SECTION 1. AMENDMENT.** Section 15-62.4-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **15-62.4-02. Student financial assistance program - Criteria and procedures.**

The state board of higher education shall adopt:

1. Criteria governing the application process;
2. Criteria governing the determination of financial need, which must include consideration of parental contributions to educational expenses, but may not include consideration of other scholarships or grants awarded by other public or private entities when determining the unmet financial need of the student;
3. Criteria governing the selection process; and
4. Procedures for providing fiscal control, fund accounting, and reports.

Approved March 21, 2019

Filed March 22, 2019

# ELEMENTARY AND SECONDARY EDUCATION

## CHAPTER 144

### SENATE BILL NO. 2215

(Senator Schaible)  
(Representative Owens)

AN ACT to create and enact a new section to chapter 15.1-01 of the North Dakota Century Code, relating to the creation of the kindergarten through grade twelve education coordination council; to amend and reenact subsection 2 of section 28-32-01, and subsection 1 of section 54-59-33 of the North Dakota Century Code, relating to the definition of administrative agency, and the statewide longitudinal data system committee; and to repeal sections 54-59-17 and 54-59-18 of the North Dakota Century Code, relating to the educational technology council.

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

**SECTION 1.** A new section to chapter 15.1-01 of the North Dakota Century Code is created and enacted as follows:

##### **Kindergarten through grade twelve education coordination council.**

1. The state board of public school education shall oversee the creation and ongoing operation of the kindergarten through grade twelve education coordination council.
2. The council consists of:
  - a. Three members of the legislative assembly, one member of the majority party from each chamber of the legislative assembly, selected by the respective majority leader of the chamber, and one member of the minority party selected through collaboration between the respective minority leaders of each chamber;
  - b. The governor or the governor's designee;
  - c. The superintendent of public instruction or the superintendent's designee;
  - d. The president of the state board for career and technical education or the president's designee;
  - e. The president of the board of the North Dakota council of educational leaders or the president's designee;
  - f. The president of the board of North Dakota united or the president's designee;

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- g. The president of the board of the North Dakota school boards association or the president's designee;
  - h. The president of the board of the North Dakota small organized schools or the president's designee;
  - i. The president of the board of the North Dakota school counselor association or the president's designee; and
  - j. The following gubernatorial appointees:

    - (1) An individual representing the statewide longitudinal data system committee;
    - (2) An individual representing a tribal school;
    - (3) An individual employed as a public school administrator;
    - (4) An individual employed as a public school principal;
    - (5) An individual employed as a public school teacher;
    - (6) A director of a special education unit; and
    - (7) A director of a regional education association.
3. The term of office for a member appointed by the governor is four years. The governor may stagger the initial appointments to the council so no more than three members' terms expire in any year.
4. The council shall select a presiding officer annually from among its members.
5. A member of the council who is a member of the legislative assembly is entitled to receive per diem compensation at the rate provided under section 54-35-10 for each day performing official duties of the council and to reimbursement for travel and expenses as provided by law, to be paid by the legislative council. A member of the council who is not a state employee is entitled to receive as compensation sixty-two dollars and fifty cents per day and to reimbursement of expenses as provided by law for state officers while attending meetings of the council, to be paid by the state board of public school education. A state employee who is a member of the council is entitled to receive that employee's regular salary and is entitled to reimbursement for mileage and expenses, to be paid by the employing agency.
6. The council may hire an executive director.
7. The council shall:
- a. Assist in the implementation, dissemination, and communication of the statewide strategic vision and evaluate progress toward meeting the identified goals and strategies.
  - b. Perform a continuous review of the effectiveness and efficiency of access and delivery of education services and programs in the state.

- c. Identify opportunities for increased collaboration among state education entities and stakeholders.
  - d. Identify gaps or duplications in education services and programs and provide recommendations for addressing those gaps or duplications.
  - e. Study and evaluate new and emerging educational initiatives and trends and provide recommendations for policy changes to state entities or the legislative assembly if necessary.
  - f. Support the implementation, dissemination, and communication of local or regional educational initiatives and practices, including innovative education programs, on a statewide level.
  - g. Establish a one-stop communication and information hub to provide the public and interested parties with seamless access to state entities that deliver education services and programs.
  - h. Develop and utilize subcommittees as needed.
  - i. Seek advice and input from interested parties not appointed to the council as needed.
8. The council shall meet at least four times per calendar year.
  9. The council shall prepare and present an annual report of council activities to the state board of public school education and to the legislative management.

<sup>51</sup> **SECTION 2. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
  - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
  - b. The adjutant general with respect to the department of emergency services.
  - c. The council on the arts.
  - d. The state auditor.

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<sup>51</sup> Section 28-32-01 was also amended by section 6 of House Bill No. 1521, chapter 472, and section 1 of Senate Bill No. 2264, chapter 265.

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- e. The department of commerce with respect to the division of economic development and finance.
  - f. The dairy promotion commission.
  - g. The education factfinding commission.
  - h. The educational technology kindergarten through grade twelve education coordination 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, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
  - 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 attorney general with respect to activities of the state toxicologist and the state crime laboratory.
  - s. 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.
  - t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
  - u. 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.
  - v. The commission on legal counsel for indigents.
  - w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
  - x. The industrial commission with respect to approving or setting water rates under chapter 61-40.



**SECTION 3. AMENDMENT.** Subsection 1 of section 54-59-33 of the North Dakota Century Code is amended and reenacted as follows:

1. The statewide longitudinal data system committee consists of:
  - a. The commissioner of the board of higher education or the commissioner's designee;
  - b. The superintendent of public instruction or the superintendent's designee;
  - c. The chief information officer or the officer's designee;
  - d. The director of the department of career and technical education or the director's designee;
  - e. The director of job service North Dakota or the director's designee;
  - f. The commissioner of commerce or the commissioner's designee;
  - g. The director of the department of human services or the director's designee;
  - h. ~~The director of the North Dakota educational technology council;~~
  - i. The executive director of the North Dakota council of educational leaders or the executive director's designee;
  - j. The director of the North Dakota workforce development council or the director's designee; and
  - k. Two members of the legislative assembly appointed by the chairman of the legislative management.

**SECTION 4. REPEAL.** Sections 54-59-17 and 54-59-18 of the North Dakota Century Code are repealed.

Approved April 30, 2019

Filed May 2, 2019

## CHAPTER 145

### SENATE BILL NO. 2025

(Legislative Management)  
(Education Policy Committee)

AN ACT to amend and reenact section 15.1-02-04 of the North Dakota Century Code, relating to the duty of the superintendent of public instruction to review the statewide education strategic vision; and provide reports to the legislative assembly and legislative management.

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

<sup>52</sup> **SECTION 1. AMENDMENT.** Section 15.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-02-04. Superintendent of public instruction - Duties.**

The superintendent of public instruction:

1. Shall supervise the provision of elementary and secondary education to the students of this state.
2. Shall supervise the establishment and maintenance of schools and provide advice and counsel regarding the welfare of the schools.
3. Shall supervise the development of course content standards.
4. Shall supervise the assessment of students.
5. Shall serve as an ex officio member of the board of university and school lands.
6. Shall keep a complete record of all official acts and appeals.
7. As appropriate, shall determine the outcome of appeals regarding education matters.
8. Shall direct school district annexation, reorganization, and dissolution and employ and compensate personnel necessary to enable the state board of public school education to carry out its powers and duties regarding school district annexation, reorganization, and dissolution.
9. Shall facilitate a process to review and update annually the statewide prekindergarten through grade twelve education strategic vision. The process must include input and participation from a steering committee that includes representatives of all state-level entities receiving state education funding and education stakeholder groups. Each steering committee member entity receiving state education funds shall provide components of the entity's

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<sup>52</sup> Section 15.1-02-04 was also amended by section 1 of House Bill No. 1429, chapter 146.

strategic plan which are aligned to the statewide strategic vision. The steering committee shall prepare a collaborative report of the strategic plans of each committee member entity receiving state education funds. The superintendent shall provide the collaborative report and any updates to the strategic vision to the legislative management during each interim and to a joint meeting of the education standing committees during each regular legislative session.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 146

### HOUSE BILL NO. 1429

(Representatives Schreiber-Beck, D. Johnson, Pyle, Sanford)

AN ACT to create and enact a new section to chapter 15.1-02 of the North Dakota Century Code, relating to a teacher shortage loan forgiveness program administered by the superintendent of public instruction; to amend and reenact section 15.1-02-04 of the North Dakota Century Code, relating to the duties of the superintendent of public instruction; to repeal section 15-10-38 of the North Dakota Century Code, relating to a teacher shortage loan forgiveness program administered by the state board of higher education; to provide for a transfer; to provide an exemption; to provide an effective date; and to provide an expiration date.

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

<sup>53</sup> **SECTION 1. AMENDMENT.** Section 15.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-02-04. Superintendent of public instruction - Duties.**

The superintendent of public instruction:

1. Shall supervise the provision of elementary and secondary education to the students of this state.
2. Shall supervise the establishment and maintenance of schools and provide advice and counsel regarding the welfare of the schools.
3. Shall supervise the development of course content standards.
4. Shall supervise the assessment of students.
5. Shall serve as an ex officio member of the board of university and school lands.
6. Shall keep a complete record of all official acts and appeals.
7. As appropriate, shall determine the outcome of appeals regarding education matters.
8. Shall direct school district annexation, reorganization, and dissolution and employ and compensate personnel necessary to enable the state board of public school education to carry out its powers and duties regarding school district annexation, reorganization, and dissolution.

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<sup>53</sup> Section 15.1-02-04 was also amended by section 1 of Senate Bill No. 2025, chapter 145.

9. Shall administer a student loan forgiveness program for individuals teaching at grade levels, in content areas, and in geographical locations identified as having a teacher shortage or critical need.

**SECTION 2. AMENDMENT.** Section 15.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-04. Superintendent of public instruction - Duties.**

The superintendent of public instruction:

1. Shall supervise the provision of elementary and secondary education to the students of this state.
2. Shall supervise the establishment and maintenance of schools and provide advice and counsel regarding the welfare of the schools.
3. Shall supervise the development of course content standards.
4. Shall supervise the assessment of students.
5. Shall serve as an ex officio member of the board of university and school lands.
6. Shall keep a complete record of all official acts and appeals.
7. As appropriate, shall determine the outcome of appeals regarding education matters.
8. Shall direct school district annexation, reorganization, and dissolution and employ and compensate personnel necessary to enable the state board of public school education to carry out its powers and duties regarding school district annexation, reorganization, and dissolution.
9. ~~Shall administer a student loan forgiveness program for individuals teaching at grade levels, in content areas, and in geographical locations identified as having a teacher shortage or critical need.~~

**SECTION 3.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Loans - Teacher shortages - Loan forgiveness.**

1. The superintendent of public instruction shall administer a student loan forgiveness program for individuals teaching at grade levels, in content areas, and in geographical locations identified as having a teacher shortage or critical need. The superintendent may approve loan forgiveness for no more than two teachers per year in a school district. The superintendent shall adopt rules to implement the program.
2. The superintendent annually shall identify grade levels, content areas, and geographical locations in which a teacher shortage or critical need exists.
3. To be eligible for loan forgiveness under this section, an individual:

- a. Must have graduated from an accredited teacher preparation program and signed a contract to teach at a grade level or in a content area and in a geographical location identified by the superintendent as having an existing teacher shortage or critical need; and
- b. Must have an existing student loan.
4. For purposes of this section, the definitions of rural school district and remote town school district have the same meaning as the definitions under the national center for education statistics locale codes.
5. If an individual is receiving loan forgiveness under any other provision, the individual may not receive loan forgiveness under this section during the same application year.
6. Subject to appropriation, an eligible individual may receive loan forgiveness under the program as follows:
  - a. If the individual accepts one of up to five positions of critical need in a nonrural school district or nonremote town school district, the individual may receive up to three thousand dollars per year for a maximum of four consecutive years.
  - b. If the individual accepts a position in a rural school district or remote town school district with an enrollment of fewer than one thousand students, the individual may receive up to four thousand five hundred dollars per year for a maximum of four consecutive years.
  - c. If the individual accepts one of up to five positions of critical need in a rural school district or remote town school district with an enrollment of fewer than one thousand students, the individual may receive up to six thousand five hundred dollars per year for a maximum of four consecutive years.
7. The superintendent shall consider all applications under this section based on the number of unfilled school vacancies, prioritized by critical need and geographic location.
8. Upon notification the individual has completed a full year of teaching in a school district, state-supported school, or nonpublic school in this state at a grade level or in a content area and in a geographical location identified by the superintendent as one in which a teacher shortage or critical need exists, the superintendent shall distribute funds directly to the lending institution of the individual to repay outstanding loan principal balances on behalf of eligible applicants. The superintendent shall terminate loan forgiveness payments to eligible individuals if the loan principal balance of the eligible individual is paid in full.
9. The superintendent shall administer the program only for eligible individuals receiving teacher loan forgiveness benefits for the 2018-19 school year. The superintendent shall provide benefits under this program to eligible individuals until the individual has received the maximum benefit under this section or has become ineligible to receive benefits under the program.

**SECTION 4. REPEAL.** Section 15-10-38 of the North Dakota Century Code is repealed.

**SECTION 5. TRANSFER.** The commissioner of higher education shall transfer the funding continued into the 2019-21 biennium to the superintendent of public instruction to defray the expenses of the teacher loan forgiveness program.

**SECTION 6. EXEMPTION - TEACHER LOAN FORGIVENESS PROGRAM FUNDING.** Pursuant to provisions of section 54-44.1-11 the unexpended amount remaining from the appropriation for the teacher loan forgiveness program, as authorized in section 1 of chapter 28 of the 2017 Session Laws, at the end of the 2017-19 biennium, may be continued into the 2019-21 biennium for the purpose of providing teacher loan forgiveness.

**SECTION 7. EFFECTIVE DATE.** Section 2 of this Act becomes effective July 1, 2023.

**SECTION 8. EXPIRATION DATE.** Section 3 of this Act is effective through June 30, 2022, and after that date is ineffective.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 147

### HOUSE BILL NO. 1027

(Legislative Management)  
(Education Policy Committee)

AN ACT to amend and reenact sections 15.1-02-15, 15.1-02-17, and 15.1-09-33.2 of the North Dakota Century Code, relating to references to the Every Student Succeeds Act.

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

**SECTION 1. AMENDMENT.** Section 15.1-02-15 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-15. ~~No Child Left Behind~~Every Student Succeeds Act - Information required.**

Whenever the superintendent of public instruction determines that any bill or amendment under consideration by an interim committee of the legislative management or by a standing committee or a conference committee of the legislative assembly contains a provision required by the ~~No Child Left Behind~~Every Student Succeeds Act of 20012015 [Pub. L. 107-110114-95; 115114 Stat. 14251177; 20 U.S.C. 630128, et seq.] or by federal regulations promulgated to implement that Act, the superintendent shall provide the members of the appropriate committee with the specific language of the ~~No Child Left Behind~~Every Student Succeeds Act which sets forth the requirement, together with the statutory citation for that language, or the specific language of the federal regulations which sets forth the requirement, together with the citation for the regulations.

**SECTION 2. AMENDMENT.** Section 15.1-02-17 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-17. State accountability plan - Legislative review.**

Before the superintendent of public instruction may submit to the United States secretary of education any proposed changes in the state accountability plan required under the ~~No Child Left Behind~~Every Student Succeeds Act of 20012015 [Pub. L. 107-110114-95; 115114 Stat. 14251177; 20 U.S.C. 630128 et seq.], the superintendent shall present the proposed changes to ~~the~~an interim ~~no child left behind~~ committee designated by the legislative management. The committee shall review the proposed changes; accept testimony and documentary evidence regarding the impact of the proposed changes on the students, schools, school districts, and taxpayers of this state; and provide advice and recommendations regarding the proposed changes to the superintendent.

**SECTION 3. AMENDMENT.** Section 15.1-09-33.2 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-09-33.2. Continuing education - Payment - Directives.**



A school board's right to reimburse teachers for the cost of continuing education activities undertaken in connection with the ~~No Child Left Behind~~Every Student Succeeds Act of 20012015 may not be contractually curtailed.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 148

### SENATE BILL NO. 2171

(Senators Rust, Davison, Oban)  
(Representatives Guggisberg, Monson, Sanford)

AN ACT to amend and reenact section 15.1-02-16 of the North Dakota Century Code, relating to credentials for teachers of computer and cyber science.

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

**SECTION 1. AMENDMENT.** Section 15.1-02-16 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-02-16. Superintendent of public instruction - Issuance of credentials to teachers and administrators.**

The superintendent of public instruction may adopt rules governing the issuance of:

1. Credentials for teachers of driver's education;
2. Credentials for teachers of early childhood special education;
3. Credentials for elementary school principals;
4. Credentials for teachers of students who are emotionally disturbed;
5. Credentials for teachers of students who are gifted and talented;
6. Credentials for secondary school principals;
7. Credentials for library media;
8. Credentials for teachers of title I;
9. Credentials for teachers of students who have intellectual disabilities;
10. Credentials for teachers of students who are physically disabled;
11. Credentials for coordinators of programs for students with limited English proficiency;
12. Credentials for school counselors;
13. Credentials for special education directors;
14. Credentials for special education strategists;
15. Credentials for teachers of students who have specific learning disabilities;
16. Credentials for superintendents;

17. Credentials for teachers of students who have vision impairments;
18. Credentials for teachers of students who are deaf or hard of hearing; and
19. Credentials for teachers of computer and cyber science; and
20. Certificate of completion for paraprofessionals.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 149

### SENATE BILL NO. 2265

(Senators Schaible, Davison, Rust)  
(Representatives Owens, Schreiber-Beck)

AN ACT to create and enact a new section to chapter 15.1-02 and section 15.1-27-04.3 of the North Dakota Century Code, relating to state school aid local property tax effort and credentialing of title I certified teachers and coordinators; to amend and reenact sections 15.1-06-04 and 15.1-07-34, the new section to chapter 15.1-09, as created by section 1 of Senate Bill No. 2230, as approved by the sixty-sixth legislative assembly, and sections 15.1-18-10, 15.1-21-03, 15.1-27-02, 15.1-27-03.1, 15.1-27-04.1, 15.1-27-23, 15.1-27-35, 15.1-29-02.1, 15.1-29-12, and 57-15-14.2 of the North Dakota Century Code, relating to teacher professional development days in the school calendar, youth behavioral health training, school board membership, teaching licenses, high school unit instructional time, per student payments, the determination of weighted average daily membership, state aid payable to school districts, weather emergencies, the calculation of average daily membership, a cross-border attendance contract with South Dakota, the determination of tuition payments, and school district levies; to repeal section 15.1-06-05 of the North Dakota Century Code, relating to applications for reconfiguration of instructional days; to provide for a report to legislative management; to provide an appropriation; 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:

<sup>54</sup> **SECTION 1.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

##### **Credentials for teachers and coordinators of title I.**

The superintendent of public instruction shall create a process to reinstate and recertify title I credentials for individuals in the state who held a valid certification, issued by the department of public instruction, as of July 1, 2018, and continue the process in perpetuity. A school district may advertise employment for a title I certified teacher each year until the position is filled. The board of a school district may authorize the hiring of a teacher who is not certified as a title I teacher for the school year if the school district fails to receive applications from qualified applicants to fill the advertised position by July 1.

**SECTION 2. AMENDMENT.** Section 15.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-06-04. School calendar - Length.**

1. A school district shall provide for a school calendar that includes:

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<sup>54</sup> Section 15.1-09-01.1 was created by section 1 of Senate Bill No. 2230, chapter 155.

- a. ~~At least one hundred seventy-five days~~ nine hundred sixty-two and one-half hours of instruction for elementary school students and one thousand fifty hours of instruction for middle and high school students;
  - b. Three holidays, as selected by the board in consultation with district teachers from the list provided for in subdivisions b through j of subsection 1 of section 15.1-06-02;
  - c. No more than two days for:
    - (1) Parent-teacher conferences; or
    - (2) Compensatory time for parent-teacher conferences held outside of regular school hours; and
  - d. ~~At least two~~ three days of professional development not including meals or breaks.
2. a. ~~A~~ For the first three days of professional development required under subdivision d of subsection 1, a day of professional development must consist of:
- ~~(1)~~ a. Six hours of professional development, exclusive of meals and other breaks, conducted within a single day;
  - ~~(2)~~ b. Six hours of cumulative professional development conducted under the auspices of a professional learning community; or
  - ~~(3)~~ c. Two four-hour periods of professional development, exclusive of meals and other breaks, conducted over two days.
- b. ~~If a school district offers a four-hour period of professional development, as permitted in this subsection, the school district may schedule instruction during other available hours on that same day and be credited with providing one-half day of instruction to students. This subdivision does not apply unless the one-half day of instruction equals at least one-half of the time required for a full day of instruction, as defined in this section.~~
3. If because of weather a school must dismiss before completing a full day of instruction, the school is responsible for making up only those hours and portions of an hour between the time of early dismissal and the conclusion of a full day of classroom instruction if the dismissal will result in the school failing to meet the requirements of subdivision a of subsection 1.
4. For purposes of this section, a full day of instruction consists of:
- a. At least five and one-half hours for kindergarten and elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
  - b. At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.

5. If a school district intends to operate under a school calendar that consists of four days of instruction per week, the school district shall apply and be approved for a waiver by the superintendent of public instruction.

<sup>55</sup> **SECTION 3. AMENDMENT.** Section 15.1-07-34 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-07-34. Provision of youth behavioral health training to teachers, administrators, and ancillary staff.**

1. Every two years, each school district shall provide a minimum of eight hours of professional development on youth behavioral health to elementary, middle, and high school teachers, and administrators. Each school district shall encourage ancillary and support staff to participate in the professional development. Based on the annual needs assessment of the school district, these hours must be designated from the following categories:
  - a. Trauma;
  - b. Social and emotional learning, including resiliency;
  - c. Suicide prevention;
  - d. Bullying;
  - e. Understanding of the prevalence and impact of youth behavioral health wellness on family structure, education, juvenile services, law enforcement, and health care and treatment providers;
  - f. Knowledge of behavioral health symptoms, and risks;
  - g. Awareness of referral sources and evidence-based strategies for appropriate interventions; or
  - h. Other evidence-based strategies to reduce risk factors for students; or
  - i. Current or new evidence-based behavior prevention or mitigation techniques.
2. Each school district shall report the professional development hours to the department of public instruction.
3. The superintendent of public instruction shall collaborate with regional education associations to disseminate information, training materials, and notice of training opportunities to school districts and nonpublic schools.

**SECTION 4. AMENDMENT.** The new section to chapter 15.1-09, as created by section 1 of Senate Bill No. 2230, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

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<sup>55</sup> Section 15.1-07-34 was also amended by section 1 of Senate Bill No. 2149, chapter 154.

### School board membership - Prohibition.

If a tribal government has prescribed by tribal law or resolution qualifications for eligibility for candidates for public office relating to criminal convictions which are more restrictive than the laws of this state, the qualifications of candidates for eligibility for membership of a public school board of a school district located on tribal land may not be less restrictive than the qualifications for eligibility prescribed by tribal law or resolution for public office relating to criminal convictions. For purposes of this section, "tribal land" means that portion of the land within the exterior boundaries of an Indian reservation which is located in the state.

<sup>56</sup> **SECTION 5. AMENDMENT.** Section 15.1-18-10 of the North Dakota Century Code is amended and reenacted as follows:

#### 15.1-18-10. Specialty areas - Teacher qualification.

Notwithstanding the requirements of this chapter:

1. An individual may teach art, business education, computer education, a foreign language, music, physical education, special education, and technology education at any grade level from kindergarten through grade eight, provided the individual:
  - a. Is licensed to teach by the education standards and practices board;
  - b. Is approved to teach in that area by the education standards and practices board; and
  - c. Meets all requirements set forth in rule by the superintendent of public instruction.
2. An individual may teach Native American languages provided the individual is an eminence-credentialed teacher.
3. An individual may teach in the areas of trade, industry, technical occupations, or health occupations, provided the individual has been issued a license to teach in such areas by the education standards and practices board.
4. An individual may teach in any subject, except elementary education, special education, mathematics, science, language arts, and social studies, if the individual:
  - a. Has a permit issued by the board and has a high school diploma; and
  - b. (1) Possesses at least four thousand hours over five years of relevant work experience in the subject area to be taught;  
(2) Possesses a certificate, permit, or degree in the subject area to be taught; or  
(3) Achieves a passing score on the Praxis content test.

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<sup>56</sup> Section 15.1-18-10 was also amended by section 1 of House Bill No. 1531, chapter 163, section 18 of Senate Bill No. 2013, chapter 38, and section 18 of Senate Bill No. 2015, chapter 40.

**SECTION 6. AMENDMENT.** Section 15.1-21-03 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-03. High school unit - Instructional time.**

1. Except as provided in subsection 2, each unit must consist of at least one hundred twenty hours of ~~instruction~~student engagement per school calendar.
2. The following units must consist of at least one hundred fifty hours of ~~instruction~~student engagement per school calendar: natural sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers.
3. The hour requirements of this section are subject to reductions resulting from the holidays and nonstudent contact days provided for in section 15.1-06-04.
4. This section does not apply to schools or school districts having block schedules approved by the superintendent of public instruction.

**SECTION 7. AMENDMENT.** Section 15.1-27-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-02. Per student payments - Required reports.**

1. The superintendent of public instruction may not forward state aid payments to a school district beyond the September payment unless the district has filed the September tenth fall enrollment report with the superintendent.
2. 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. The June thirtieth student membership and attendance report;
  - b. An annual school district financial report; and
  - c. ~~The September tenth fall enrollment report; and~~
  - d. The personnel report forms for licensed and nonlicensed employees.
- ~~2-3.~~ On or before December fifteenth, each school district shall file with the superintendent of public instruction the taxable valuation and mill levy certifications. If a district fails to file the taxable valuation and mill levy certifications by the required date, the superintendent of public instruction may not forward to the district any state aid payments to which the district is entitled, until the taxable valuation and mill levy certifications are filed.

**SECTION 8. AMENDMENT.** Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03.1. Weighted average daily membership - Determination.**

1. For each school district, the superintendent of public instruction shall multiply by:



- a. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
- b. 0.60 the number of full-time equivalent students enrolled in a summer education program, including a migrant summer education program;
- c. 0.40 the number of full-time equivalent students who:
  - (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and placed in the first of six categories of proficiency; and
  - (2) Are enrolled in a program of instruction for English language learners;
- d. 0.28 the number of full-time equivalent students who:
  - (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be more proficient than students placed in the first of six categories of proficiency and therefore placed in the second of six categories of proficiency; and
  - (2) Are enrolled in a program of instruction for English language learners;
- e. 0.25 the number of full-time equivalent students under the age of twenty-one enrolled in grades nine through twelve in an alternative high school;
- f. 0.20 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
- g. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
- h. 0.15 the number of full-time equivalent students in grades six through eight enrolled in an alternative education program for at least an average of fifteen hours per week;
- i. 0.10 the number of students enrolled in average daily membership, if the district has fewer than one hundred students enrolled in average daily membership and the district consists of an area greater than two hundred seventy-five square miles [19424.9 hectares], provided that any school district consisting of an area greater than six hundred square miles [155399 hectares] and enrolling fewer than fifty students in average daily membership must be deemed to have an enrollment equal to fifty students in average daily membership;
- j. 0.082 the number of students enrolled in average daily membership, in order to support the provision of special education services;
- k. 0.07 the number of full-time equivalent students who:
  - (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be more

- proficient than students placed in the second of six categories of proficiency and therefore placed in the third of six categories of proficiency;
- (2) Are enrolled in a program of instruction for English language learners; and
  - (3) Have not been in the third of six categories of proficiency for more than three years;
- I. 0.025 the number of students representing that percentage of the total number of students in average daily membership which is equivalent to the three-year average percentage of students in grades three through eight who are eligible for free or reduced lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.]; ~~and~~
  - m. 0.002 the number of students enrolled in average daily membership in a school district that is a participating member of a regional education association meeting the requirements of chapter 15.1-09.1.; and
  - n. 0.50 the number of students by which the district's September tenth enrollment report exceeds the number of students in the prior year's average daily membership.
2. The superintendent of public instruction shall determine each school district's weighted average daily membership by adding the products derived under subsection 1 to the district's average daily membership.

**SECTION 9. AMENDMENT.** Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03.1. Weighted average daily membership - Determination.**

1. For each school district, the superintendent of public instruction shall multiply by:
  - a. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
  - b. 0.60 the number of full-time equivalent students enrolled in a summer education program, including a migrant summer education program;
  - c. 0.40 the number of full-time equivalent students who:
    - (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and placed in the first of six categories of proficiency; and
    - (2) Are enrolled in a program of instruction for English language learners;
  - d. 0.28 the number of full-time equivalent students who:
    - (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be more proficient than students placed in the first of six categories of

proficiency and therefore placed in the second of six categories of proficiency; and

- (2) Are enrolled in a program of instruction for English language learners;
- e. 0.25 the number of full-time equivalent students under the age of twenty-one enrolled in grades nine through twelve in an alternative high school;
- f. 0.20 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
- g. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
- h. 0.15 the number of full-time equivalent students in grades six through eight enrolled in an alternative education program for at least an average of fifteen hours per week;
- i. 0.10 the number of students enrolled in average daily membership, if the district has fewer than one hundred students enrolled in average daily membership and the district consists of an area greater than two hundred seventy-five square miles [19424.9 hectares], provided that any school district consisting of an area greater than six hundred square miles [155399 hectares] and enrolling fewer than fifty students in average daily membership must be deemed to have an enrollment equal to fifty students in average daily membership;
- j. 0.082 the number of students enrolled in average daily membership, in order to support the provision of special education services;
- k. 0.07 the number of full-time equivalent students who:
- (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be more proficient than students placed in the second of six categories of proficiency and therefore placed in the third of six categories of proficiency;
- (2) Are enrolled in a program of instruction for English language learners; and
- (3) Have not been in the third of six categories of proficiency for more than three years;
- l. 0.025 the number of students representing that percentage of the total number of students in average daily membership which is equivalent to the three-year average percentage of students in grades three through eight who are eligible for free or reduced lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.];
- m. 0.002 the number of students enrolled in average daily membership in a school district that is a participating member of a regional education association meeting the requirements of chapter 15.1-09.1; and

- n. ~~0.500.60~~ the number of students by which the district's September tenth enrollment report exceeds the number of students in the prior year's average daily membership increasing the factor annually by 0.10, not to exceed 1.00; and
- o. For districts paid based on September tenth enrollment in the prior year, 0.50 the number of students determined by deducting the number of students in the prior year's September tenth enrollment from the prior year's average daily membership, increasing the factor annually by 0.10, not to exceed 1.00. If the prior year's September tenth enrollment exceeds the prior year's average daily membership, then a deduction of 0.50 the number of excess students, increasing the factor annually by 0.10, not to exceed 1.00.
2. The superintendent of public instruction shall determine each school district's weighted average daily membership by adding the products derived under subsection 1 to the district's average daily membership.

**SECTION 10. AMENDMENT.** Section 15.1-27-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-04.1. Baseline funding - Establishment - Determination of state aid.**

1. To determine the amount of state aid payable to each district, the superintendent of public instruction shall establish each district's baseline funding. A district's baseline funding consists of:
- a. All state aid received by the district in accordance with chapter 15.1-27 during the ~~2012-13~~2018-19 school year;
  - b. ~~The district's 2012-13 mill levy reduction grant, as determined in accordance with chapter 57-64, as it existed on June 30, 2013;~~
  - c. An amount equal to that raised by the district's 2012 general fund levy or that raised by one hundred ten mills of the district's 2012 general fund levy, whichever is less, the property tax deducted by the superintendent of public instruction to determine the 2018-19 state aid payment;
  - d. ~~An amount equal to that raised by the district's 2012 long-distance learning and educational technology levy;~~
  - e. ~~An amount equal to that raised by the district's 2012 alternative education program levy; and~~
  - f. An amount equal to seventy-five percent of the revenue received by the school district during the 2017-18 school year for the following revenue types:
    - (1) ~~Seventy-five percent of all revenue received by the school district and~~Revenue reported under code 2000 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08;
    - (2) ~~Seventy-five percent of all mineral~~Mineral revenue received by the school district through direct allocation from the state treasurer and not

reported under code 2000 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08;

- (3) ~~Seventy five percent of all tuition received by the school district and~~ Tuition reported under code 1300 of the North Dakota school district financial accounting and reporting manual, as developed by the superintendent of public instruction in accordance with section 15.1-02-08, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility and tuition received for the provision of an adult farm management program;
  - (4) ~~Seventy five percent of all revenue received by the school district~~ Revenue from payments in lieu of taxes on the distribution and transmission of electric power;
  - (5) ~~Seventy five percent of all revenue received by the school district~~ Revenue from payments in lieu of taxes on electricity generated from sources other than coal;
  - (6) ~~All revenue received by the school district from mobile home taxes;~~
  - (7) ~~Seventy five percent of all revenue received by the school district~~ Revenue from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c)(3);
  - (8) All telecommunications and
- d. An amount equal to the total revenue received by the school district during the 2017-18 school year for the following revenue types:
- (1) Mobile home tax revenue;
  - (2) Telecommunications tax revenue received by the school district; and
  - (9)(3) ~~All revenue received by the school district~~ Revenue from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans credit.
- e. Beginning with the 2020-21 school year, the superintendent shall reduce the baseline funding for any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2012-13 school year. The reduction must be proportional to the number of weighted student units in the grades that are offered through another school district relative to the total number of weighted student units the school district offered in the year before the school district became an elementary district. The reduced baseline funding applies to the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter. For districts that become an elementary district prior to the 2020-21 school year, the superintendent shall use the reduced baseline funding to calculate state aid for the 2020-21 school year and for each year thereafter.

2. a. The superintendent shall divide the district's total baseline funding determined in subsection 1 by the district's 2012-13 2017-18 weighted student units to determine the district's baseline funding per weighted student unit.
- b. For any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2017-18 school year, the superintendent shall adjust the district's baseline funding per weighted student unit used to calculate state aid. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's weighted student units after the school district becomes an elementary district to determine the district's adjusted baseline funding per weighted student unit. The superintendent shall use the district's adjusted baseline funding per weighted student unit in the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter.
- c. Beginning with the 2021-22 school year and for each school year thereafter, the superintendent shall reduce the district's baseline funding per weighted student unit. Each year the superintendent shall calculate the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit provided in subsection 3. The superintendent shall reduce the district's baseline funding per weighted student unit by fifteen percent of the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit for the 2021-22 school year. For each year thereafter, the reduction percentage is increased by an additional fifteen percent. However, the district's baseline funding per weighted student unit, after the reduction, may not be less than the payment per weighted student unit provided in subsection 3.
3. a. In 2017-18 For the 2019-20 school year, the superintendent shall multiply the calculate state aid as the greater of:
- (1) The district's weighted student units multiplied by nine thousand six hundred forty-six thirty-nine dollars;
  - (1) The superintendent shall adjust the product to ensure the product is at least equal to the greater of:
    - (a)(2) One hundred eight one percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by nine thousand eight hundred thirty-nine dollars; or
    - (b)(3) One hundred percent of the The district's baseline funding as established in subsection 1.
  - (2) The superintendent also shall adjust the product to ensure the product does not exceed one hundred forty percent of the district's baseline funding per weighted student unit multiplied by the district's weighted

- ~~student units from the previous school year, as established in subsection 2.~~
- b. ~~In 2018-19~~For the 2020-21 school year and each school year thereafter, the superintendent shall ~~multiply the~~calculate state aid as the greater of:
- (1) ~~The district's weighted student units multiplied by nineteen thousand six hundred forty-six~~thirty-six dollars.
  - (1) ~~The superintendent shall adjust the product to ensure the product is at least equal to the greater of:~~
  - (2)
    - (a) ~~One hundred eight~~two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units ~~from the previous school year~~ not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand thirty-six dollars; or
    - (b)(3) ~~One hundred percent of the~~The district's baseline funding as established in subsection 1 ~~less the amount in paragraph 1, with the difference reduced by fifteen percent for the 2021-22 school year and fifteen percent each school year thereafter, and then the difference added to the amount determined in paragraph 1.~~
- c. The superintendent also shall adjust state aid determined in this subsection:
- (1) ~~For the 2019-20 school year, to ensure the amount does not exceed one hundred five percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year.~~
  - (2) ~~The superintendent also shall adjust the product~~For the 2020-21 school year and each school year thereafter, to ensure the ~~product~~amount does not exceed one hundred ~~forty~~ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year.
4. After determining the product in accordance with subsection 3, the superintendent of public instruction shall:
- a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district, except the amount in dollars subtracted for purposes of this subdivision may not exceed the previous year's amount in dollars subtracted for purposes of this subdivision by more than twelve percent, adjusted pursuant to section 15.1-27-04.3; and
  - b. Subtract an amount equal to seventy-five percent of all ~~revenues~~revenue ~~types listed in paragraphs 1 through 5, and 7 of subdivision f of subsection 1 and one hundred percent of all revenues listed in~~

paragraphs 6, 8, and 9 of subdivision f subdivisions c and d of subsection 1. Before determining the deduction for seventy-five percent of all revenue types, the superintendent of public instruction shall adjust revenues as follows:

(1) Tuition revenue shall be adjusted as follows:

(a) In addition to deducting tuition revenue received specifically for the operation of an educational program provided at a residential treatment facility and tuition revenue received for the provision of an adult farm management program as directed in paragraph 3 of subdivision c of subsection 1, the superintendent of public instruction also shall reduce the total tuition reported by the school district by the amount of tuition revenue received for the education of students not residing in the state and for which the state has not entered a cross-border education contract; and

(b) The superintendent of public instruction also shall reduce the total tuition reported by admitting school districts meeting the requirements of subdivision e of subsection 2 of section 15.1-29-12 by the amount of tuition revenue received for the education of students residing in an adjacent school district.

(2) After adjusting tuition revenue as provided in paragraph 1, the superintendent shall reduce all remaining revenues from all revenue types by the percentage of mills levied in 2018 by the school district for sinking and interest relative to the total mills levied in 2018 by the school district for all purposes.

5. The amount remaining after the computation required under subsection 4 is the amount of state aid to which a school district is entitled, subject to any other statutory requirements or limitations.
6. On or before June thirtieth of each year, the school board shall certify to the superintendent of public instruction the final average daily membership for the current school year.
7. For purposes of the calculation in subsection 4, each county auditor, in collaboration with the school districts, shall report the following to the superintendent of public instruction on an annual basis:
  - a. The amount of revenue received by each school district in the county during the previous school year for each type of revenue identified in subdivisions c and d of subsection 1;
  - b. The total number of mills levied in the previous calendar year by each school district for all purposes; and
  - c. The number of mills levied in the previous calendar year by each school district for sinking and interest fund purposes.

**SECTION 11. AMENDMENT.** Subdivision a of subsection 4 of section 15.1-27-04.1 of the North Dakota Century Code is amended and reenacted as follows:



- a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district, ~~except the amount in dollars subtracted for purposes of this subdivision may not exceed the previous year's amount in dollars subtracted for purposes of this subdivision by more than twelve percent, adjusted pursuant to section 15.1-27-04.3; and~~

**SECTION 12.** Section 15.1-27-04.3 of the North Dakota Century Code is created and enacted as follows:

**15.1-27-04.3. Adjustment to state aid - Local property tax effort.**

If the amount subtracted from a school district's state aid payment under subdivision a of subsection 4 of section 15.1-27-04.1 is less than the amount generated by sixty mills, the superintendent of public instruction shall adjust the amount subtracted as follows:

1. For the 2020-21 school year, increase the amount subtracted by an amount equal to ten percent of the difference between the amount generated by sixty mills and the amount determined pursuant to subdivision a of subsection 4 of section 15.1-27-04.1 before adjustment under this section;
2. For the 2021-22 school year, increase the amount subtracted by an amount equal to twenty percent of the difference between the amount generated by sixty mills and the amount determined pursuant to subdivision a of subsection 4 of section 15.1-27-04.1 before adjustment under this section;
3. For the 2022-23 school year, increase the amount subtracted by an amount equal to forty percent of the difference between the amount generated by sixty mills and the amount determined pursuant to subdivision a of subsection 4 of section 15.1-27-04.1 before adjustment under this section;
4. For the 2023-24 school year, increase the amount subtracted by an amount equal to sixty percent of the difference between the amount generated by sixty mills and the amount determined pursuant to subdivision a of subsection 4 of section 15.1-27-04.1 before adjustment under this section; and
5. For the 2024-25 school year, increase the amount subtracted by an amount equal to eighty percent of the difference between the amount generated by sixty mills and the amount determined pursuant to subdivision a of subsection 4 of section 15.1-27-04.1 before adjustment under this section.

**SECTION 13. AMENDMENT.** Section 15.1-27-23 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-23. Weather or other emergency conditions - Closure of schools - State aid payments to school districts.**

1. The board of each school district shall include in the school calendar days that may be used for the rescheduling of instructional time lost as a result of severe weather or other emergency conditions.
2. a. The number of days required under subsection 1 must equal the average number of days per school year, as calculated using the previous five school years, during which the school district remained closed or provided less than a full day of instruction because of severe weather or other emergency conditions.

- b. ~~The number of days determined under subdivision a may be included within the calendar no earlier than the month of January.~~
3. ~~If the number of days during which a public school or school district is closed or provides less than a full day of instruction exceeds the number of days determined under subdivision a of subsection 2, the public school or school district shall make every effort to reschedule the remaining classes, so that students receive at least the number of full instructional days required by section 15.1-06-04 or an equivalent period of instructional time, as determined by the superintendent of public instruction establish the length of a period, day, and week in accordance with the requirements of section 15.1-06-04. If a public school or school district is closed or provides less than a full day of instruction, the public school or school district shall reschedule those hours to ensure students receive at least the minimum number of instructional hours required by subdivision a of subsection 1 of section 15.1-06-04.~~
- 4-2. Any public school or school district for which the rescheduling of classes would create undue hardship may request that, for purposes of calculating state aid payments to the school district, the governor waive the rescheduling in whole or in part.
5. ~~The governor may not grant a waiver for less than a full day of instruction. However, if a public school or school district closes for only a portion of its regular schoolday, the hours during which the school or school district is closed may be added together to determine the number of additional full days of instruction that may be waived under this section.~~

**SECTION 14. AMENDMENT.** Section 15.1-27-35 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-35. Average daily membership - Calculation.**

1. Average daily membership is calculated at the conclusion of the school year by adding the total number of dayshours that each student in a given grade, school, or school district is in attendance during a school calendar and the total number of dayshours that each student in a given grade, school, or school district is absent during a school calendar, and then dividing the sum by the greater of:
- ~~The school district's calendar~~Nine hundred sixty-two and one-half hours for elementary school students; or
  - ~~One hundred eighty-two thousand fifty hours for middle and high school students.~~
2. For purposes of calculating average daily membership, all students are deemed to be in attendance on:
- ~~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;~~
  - ~~The two days set aside for professional development activities under section 15.1-06-04; and~~

- e. ~~The two full days, or portions thereof, during which parent teacher conferences are held or which are deemed by the board of the district to be compensatory time for parent teacher conferences held outside regular school hours.~~
3. For purposes of calculating average daily membership:
- a. A student enrolled full time in any grade from one through twelve may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.
  - b. A student enrolled full time in an approved regular education kindergarten program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.
  - c. A student enrolled full time, as defined by the superintendent of public instruction, in an approved early childhood special education program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.

**SECTION 15. AMENDMENT.** Section 15.1-29-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-02.1. Cross-border attendance - Contract with South Dakota.**

1. A student who resides in a North Dakota school district contiguous to the South Dakota border may attend school in South Dakota, and a student who resides in a South Dakota school district contiguous to the North Dakota border may attend school in North Dakota, provided the superintendent of public instruction has entered into a contract with the secretary of the South Dakota department of education for the cross-border attendance of eligible students.
2. A contract entered under subsection 1 must set forth:
  - a. An application procedure;
  - b. Causes for denial of an application; and
  - c. The manner and notification of acceptance.
3. A contract entered under subsection 1 must authorize the superintendent of public instruction to count any South Dakota student participating in cross-border attendance under this section for the purposes of determining the amount of state aid to which a school district in this state is entitled. The superintendent of public instruction may not count a North Dakota student participating in cross-border attendance in accordance with the contract for purposes of determining the amount of state aid to which a school district in this state is entitled.
4. A contract entered under subsection 1 must provide that if there are more students from North Dakota than South Dakota participating in cross-border attendance under this section, the superintendent of public instruction shall forward to the secretary of the South Dakota department of education, on behalf of each excess student, an amount annually agreed to by the

superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract. The contract must also provide that if there are more students from South Dakota than North Dakota participating in cross-border attendance under this section, the secretary shall forward to the superintendent, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract. The superintendent shall pay the cost of cross-border attendance from funds appropriated by the legislative assembly for state aid to schools. Payments received by the superintendent under this subsection shall be deposited in the general fund.

- ~~5.~~ The superintendent of public instruction shall annually reconcile the number of students from each school district in this state who participate in cross-border attendance under this section with the number of students from school districts in South Dakota who participate in cross-border attendance under this section. The superintendent of public instruction shall withhold from each school district's state aid an amount equal to the cost incurred by the state on the part of the school district in permitting the cross-border attendance of students under this section.
6. A student who requires special education services may participate in cross-border attendance under this section, provided the contract entered under subsection 1 sets forth each school district's and each state's responsibilities for payment of any excess costs incurred as a result of providing the services to the student.
- ~~7-6.~~ Each school district may provide transportation to students participating in cross-border attendance under this section. However, the superintendent of public instruction may include only transportation provided within this state for purposes of determining the state transportation aid to which a district is entitled.
- ~~8-7.~~ Sections 15.1-29-01 through 15.1-29-13 do not apply to students participating in cross-border attendance under this section.

**SECTION 16. AMENDMENT.** Section 15.1-29-12 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-12. Tuition payments - Determination.**

1. Except as provided in section 15.1-29-13, a school district sending a student to another district for purposes of education shall pay the full cost of education per student incurred by the admitting district.
2. a. The admitting district shall determine the cost of education per student for its kindergarten, elementary, and high school students on the basis of its average daily membership and those expenditures permitted in determining the cost of education per student in section 15.1-27-03.
- b. To the cost of education per student, the admitting district shall add the latest available statewide average per student cost for extracurricular activities and the state average capital outlay per student. The state average capital outlay per student is determined by dividing the total of all school districts' annual expenditures for sinking and interest funds, tax

- receipts to the building funds, and general fund expenditures for capital outlay by the average daily membership of the state.
- c. The admitting district shall subtract the following from the amount arrived at under subdivision b:
- (1) The per student payment multiplied by the admitting district's school size weighting factor; and
  - (2) Any credit for taxes paid to the admitting district by the student's parent.
- d. The amount remaining is the full cost of education per student incurred by the admitting district. The tuition amount payable for the individual student is the lesser of:
- (1) The full cost of education per student incurred by the admitting district; or
  - (2) One hundred fifty percent of the state average full cost of education per student.
- e. Admitting school districts shall charge the tuition amount payable determined in subdivision d multiplied by two hundred percent or four thousand dollars, whichever is greater, if the admitting school district:
- (1) Is located in an oil-producing county;
  - (2) Is eligible to receive gross production tax revenue in lieu of property taxes;
  - (3) Is located in cities with populations over twenty-four thousand;
  - (4) Has a tax base fewer than twenty square miles;
  - (5) Levies greater than sixty mills for local property taxes;
  - (6) Has student enrollments of greater than four thousand;
  - (7) Has average student growth of over two hundred per year over the preceding five years;
  - (8) Uses portable classrooms; and
  - (9) Has enrollment exceeding school facility capacity.
3. This section does not affect the right of a school board to charge and collect tuition from students who are not residents of this state, in accordance with section 15.1-29-02.

<sup>57</sup> **SECTION 17. AMENDMENT.** Section 57-15-14.2 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>57</sup> Section 57-15-14.2 was also amended by section 3 of Senate Bill No. 2052, chapter 482.

**57-15-14.2. School district levies.**

1. ~~For taxable years after 2013, the~~The board of a school district may levy a tax not exceeding the amount in dollars that the school district levied for the prior year, plus twelve percent ~~and the dollar amount of the adjustment required in section 15.1-27-04.3,~~ up to a levy of seventy mills on the taxable valuation of the district, for any purpose related to the provision of educational services. The proceeds of this levy must be deposited into the school district's general fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.
2. ~~For taxable years after 2013, the~~The board of a school district may levy no more than twelve mills on the taxable valuation of the district, for miscellaneous purposes and expenses. The proceeds of this levy must be deposited into a special fund known as the miscellaneous fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.
3. The board of a school district may levy no more than three mills on the taxable valuation of the district for deposit into a special reserve fund, in accordance with chapter 57-19.
4. The board of a school district may levy no more than the number of mills necessary, on the taxable valuation of the district, for the payment of tuition, in accordance with section 15.1-29-15. The proceeds of this levy must be deposited into a special fund known as the tuition fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.
5. Nothing in this section limits the board of a school district from levying:
  - a. Mills for a building fund, as permitted in sections 15.1-09-49 and 57-15-16; and
  - b. Mills necessary to pay principal and interest on the bonded debt of the district, including the mills necessary to pay principal and interest on any bonded debt incurred under section 57-15-17.1 before July 1, 2013.

**SECTION 18. AMENDMENT.** Subsection 1 of section 57-15-14.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The board of a school district may levy a tax not exceeding the amount in dollars that the school district levied for the prior year, plus twelve percent ~~and the dollar amount of the adjustment required in section 15.1-27-04.3,~~ up to a levy of seventy mills on the taxable valuation of the district, for any purpose related to the provision of educational services. The proceeds of this levy must be deposited into the school district's general fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.

**SECTION 19. REPEAL.** Section 15.1-06-05 of the North Dakota Century Code is repealed.

**SECTION 20. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION FOUNDATION AID STABILIZATION FUND - RAPID ENROLLMENT GRANT ONE-TIME FUNDING.** There is appropriated out of any moneys in the foundation aid stabilization fund in the state treasury, not otherwise appropriated, the sum of

\$3,000,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of providing rapid enrollment grants to school districts, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funding provided in this section is considered a one-time funding item. The superintendent of public instruction shall award rapid enrollment grants to eligible districts only during the first year of the 2019-21 biennium based on the following criteria:

1. A district is eligible to receive a grant under this section if the number of students reflected in the district's September tenth enrollment report exceeds the number of students in the prior year September tenth enrollment report. The increase must be at least four percent or one hundred fifty students and must be at least twenty students.
2. The superintendent of public instruction shall calculate the amount to which an eligible district is entitled as follows:
  - a. Determine the actual percentage increase in the number of students and subtract two from the percentage calculated;
  - b. Determine the number of students represented by the difference determined in subdivision a of this subsection;
  - c. Multiply the number of students determined in subdivision b of this subsection by \$4,000.
3. If the amount of the appropriation provided for in this section is insufficient to meet the obligations of this subsection, the superintendent of public instruction shall prorate the payment based on the percentage of the total amount to which each school district is entitled.
4. Any district that is precluded from receiving state aid under section 15.1-27-35.3 is not eligible to receive a grant under this section.

**SECTION 21. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - FOUNDATION AID STABILIZATION FUND - MUSIC EDUCATION GRANTS.** There is appropriated out of any moneys in the foundation aid stabilization 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 public instruction for the purpose of providing music education grants, for the biennium beginning July 1, 2019, and ending June 30, 2021. At the beginning of the biennium, each eligible school may receive a grant disbursement for kindergarten through grade five based on the average daily membership of the school. Upon request, the department of public instruction shall award an eligible school a music education grant. The department must report to the sixty-seventh legislative assembly regarding the grants awarded and outcomes, including the program's impact on student behavior and mental health. The funding provided in this section is considered a one-time funding item.

**SECTION 22. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of providing matching funds to an organization providing research-based literacy intervention services to students below grade four who score below proficient in reading, for the biennium beginning July 1, 2019, and ending June 30, 2021. The department may spend the appropriated funds only as authorized in this section.

**SECTION 23. EDUCATION FUNDING FORMULA - STUDY.** There is created an education funding formula review committee. During the 2019-20 interim, the education funding formula review committee shall study the kindergarten through grade twelve education funding formula, including the components, adjustments, and weighting factors of the formula. The membership of the committee consists of the chairmen of the standing education committees of the house of representatives and the senate; three additional members of the senate, two of which must be appointed by the majority leader of the senate and one of which must be appointed by the minority leader of the senate; and three additional members of the house of representatives, two of which must be appointed by the majority leader of the house of representatives and one of which must be appointed by the minority leader of the house of representatives. Members appointed to the committee must have a secure knowledge of the current kindergarten through grade twelve funding formula. The committee shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 24. STUDY - EFFECT OF IMPACT AIDE ON THE FUNDING FORMULA.** During the 2019-20 interim, the department of public instruction, the Indian affairs commission, and the kindergarten through grade twelve coordinating council, shall study the effect of impact aide on the funding formula to reservation schools. The department of public instruction, the Indian affairs commission, and the kindergarten through grade twelve coordinating council shall report their findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 25. ALTERNATIVE TEACHER CERTIFICATION PROGRAM - REPORT TO LEGISLATIVE MANAGEMENT.** The education standards and practices board shall provide the legislative management a status report during the 2019-20 interim and during the 2021-22 interim regarding the number of teacher permits issued under an alternative teacher certification program, the effectiveness of the program, the quality of instruction provided under the program, and whether the program is accomplishing desired objectives. The report must include a recommendation regarding continuation of the program.

**SECTION 26. EFFECTIVE DATE.** Section 8 of this Act becomes effective on July 1, 2020. Section 9 of this Act becomes effective on July 1, 2021. Section 17 of this Act is effective for taxable years beginning after December 31, 2018. Section 18 of this Act is effective for taxable years beginning after December 31, 2024. Section 11 of this Act becomes effective on July 1, 2025.

**SECTION 27. EXPIRATION DATE.** Section 12 of this Act is effective through June 30, 2025, and after that date is ineffective.

**SECTION 28. EMERGENCY.** Section 4 of this Act is declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019



## CHAPTER 150

### HOUSE BILL NO. 1385

(Representatives Skroch, Brandenburg, Fegley, Johnston, Jones, McWilliams, D.  
Ruby)  
(Senator Clemens)

AN ACT to amend and reenact section 15.1-07-20 of the North Dakota Century Code, relating to mandatory safety training for school bus drivers.

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

<sup>58</sup> **SECTION 1. AMENDMENT.** Section 15.1-07-20 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-07-20. School vehicle driver - Requirements.**

1. a. Except as otherwise provided in this subsection, if an individual transports students or other passengers in a school vehicle for which a commercial driver's license is not required, the individual must:
  - (1) Hold a North Dakota driver's license;
  - (2) Be free from communicable diseases;
  - (3) Be in good physical health and have normal use of both hands, both feet, both eyes, and both ears;
  - (4) Be of sound mental health;
  - (5) Pass any drug and alcohol screening tests required by the school board; and
  - (6) Be at least twenty-one years of age, unless the board of a school district determines that an individual not meeting this requirement can safely and adequately perform the required duties.
- b. If the vehicle being used to transport students or other passengers under this subsection is a school vehicle for which a commercial driver's license is not required, but which is designed to seat ten to fifteen passengers, the individual must:
  - (1) Hold a North Dakota driver's license;
  - (2) Meet the physical and medical requirements established for commercial vehicle drivers;
  - (3) Complete any annual training required by the superintendent of public instruction; and

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<sup>58</sup> Section 15.1-07-20 was also amended by section 1 of House Bill No. 1369, chapter 151.

- (4) Be at least twenty-one years of age, unless the board of a school district determines that an individual not meeting this requirement can safely and adequately perform the required duties; and
- (5) Complete the national safety council defensive driving course number four workshop within the first year of employment and at least once every five years thereafter.
2. a. The board of a school district may request, at any time, that a health care professional designated by the board examine an individual to determine if the individual meets the physical and medical requirements of subsection 1.
- b. The health care professional conducting the examination shall forward any charges to the individual's insurance carrier for payment. Any examination costs that remain after application of the individual's insurance coverage are the responsibility of the board.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 151

### HOUSE BILL NO. 1369

(Representatives M. Johnson, Beadle, Schreiber-Beck)  
(Senator Schaible)

AN ACT to amend and reenact section 15.1-07-20 of the North Dakota Century Code, relating to payments for school bus driver physical examinations.

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

<sup>59</sup> **SECTION 1. AMENDMENT.** Section 15.1-07-20 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-07-20. School vehicle driver - Requirements.**

1. a. Except as otherwise provided in this subsection, if an individual transports students or other passengers in a school vehicle for which a commercial driver's license is not required, the individual must:
  - (1) Hold a North Dakota driver's license;
  - (2) Be free from communicable diseases;
  - (3) Be in good physical health and have normal use of both hands, both feet, both eyes, and both ears;
  - (4) Be of sound mental health;
  - (5) Pass any drug and alcohol screening tests required by the school board; and
  - (6) Be at least twenty-one years of age, unless the board of a school district determines that an individual not meeting this requirement can safely and adequately perform the required duties.
- b. If the vehicle being used to transport students or other passengers under this subsection is a school vehicle for which a commercial driver's license is not required, but which is designed to seat ten to fifteen passengers, the individual must:
  - (1) Hold a North Dakota driver's license;
  - (2) Meet the physical and medical requirements established for commercial vehicle drivers;
  - (3) Complete any annual training required by the superintendent of public instruction; and

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<sup>59</sup> Section 15.1-07-20 was also amended by section 1 of House Bill No. 1385, chapter 150.

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- (4) Be at least twenty-one years of age, unless the board of a school district determines that an individual not meeting this requirement can safely and adequately perform the required duties.
2. a. The board of a school district may request, at any time, that a health care professional designated by the board examine an individual to determine if the individual meets the physical and medical requirements of subsection 1.
- b. The health care professional conducting the examination shall forward any charges to the individual's insurance carrier for payment. Any examination costs ~~that for an initial examination and recertification examinations required to comply with chapter 15.1-07 which~~ remain after application of the individual's insurance coverage are the responsibility of the board. For any additional examinations, unless otherwise provided for by the board, any costs that remain after application of the individual's insurance coverage are the responsibility of the individual.

Approved April 10, 2019

Filed April 11, 2019

## **CHAPTER 152**

### **HOUSE BILL NO. 1088**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

AN ACT to repeal section 15.1-07-31 of the North Dakota Century Code, relating to the purchase and distribution of automated external defibrillators.

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

**SECTION 1. REPEAL.** Section 15.1-07-31 of the North Dakota Century Code is repealed.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 153

### SENATE BILL NO. 2101

(Education Committee)

(At the request of the Information Technology Department)

AN ACT to amend and reenact section 15.1-07-33 of the North Dakota Century Code, relating to the student information system.

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

**SECTION 1. AMENDMENT.** Section 15.1-07-33 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-07-33. Student information system - Exemption.**

1. Notwithstanding any other technology requirements imposed by the superintendent of public instruction, the information technology department, or the North Dakota educational technology council, each school district shall ~~acquire PowerSchool through~~ implement the state student information system administered by the information technology department and use it as its principal student information system. Each school district shall use a state course code, assigned by the department of public instruction, to identify all local classes in ~~PowerSchool~~ the state student information system.
2. The ~~superintendent of public instruction~~ statewide longitudinal data system committee may exempt a school district from having to ~~acquire~~ implement and utilize ~~PowerSchool~~ the state student information system if the school district demonstrates that, ~~in~~:
  - a. The district has acquired and is using a student information system determined to be compatible with the statewide longitudinal data system;  
or
  - b. In accordance with requirements of the bureau of Indian education, the district has acquired and is utilizing a student information system that is determined to be comparable by the superintendent.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 154

### SENATE BILL NO. 2149

(Senators Heckaman, Grabinger, Robinson)  
(Representatives Devlin, Vigesaa)

AN ACT to amend and reenact section 15.1-07-34 of the North Dakota Century Code, relating to behavioral health resource coordinators.

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

<sup>60</sup> **SECTION 1. AMENDMENT.** Section 15.1-07-34 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-07-34. ~~Provision of youth~~ Youth behavioral health training to teachers, administrators, and ancillary staff.**

1. Every two years, each school district shall provide a minimum of eight hours of professional development on youth behavioral health to elementary, middle, and high school teachers, and administrators. Each school district shall encourage ancillary and support staff to participate in the professional development. Based on the annual needs assessment of the school district, these hours must be designated from the following categories:
  - a. Trauma;
  - b. Social and emotional learning, including resiliency;
  - c. Suicide prevention;
  - d. Bullying;
  - e. Understanding of the prevalence and impact of youth behavioral health wellness on family structure, education, juvenile services, law enforcement, and health care and treatment providers;
  - f. Knowledge of behavioral health symptoms, and risks;
  - g. Awareness of referral sources and evidence-based strategies for appropriate interventions; or
  - h. Other evidence-based strategies to reduce risk factors for students.
2. Each school district shall report the professional development hours required under subsection 1 to the department of public instruction.
3. Each school within a district shall designate an individual as a behavioral health resource coordinator.

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<sup>60</sup> Section 15.1-07-34 was also amended by section 3 of Senate Bill No. 2265, chapter 149.

4. The superintendent of public instruction shall collaborate with regional education associations to disseminate information, training and instructional materials, and notice of training opportunities to school districts and nonpublic schools.
5. The superintendent of public instruction shall maintain the contact information of the behavioral health resource coordinator in each school.

Approved April 8, 2019

Filed April 9, 2019



## CHAPTER 155

### SENATE BILL NO. 2230

(Senators Poolman, Marcellais)  
(Representatives Monson, Roers Jones)

AN ACT to create and enact a new section to chapter 15.1-09 of the North Dakota Century Code, relating to public school board membership in a school district located on tribal land; and to declare an emergency.

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

<sup>61</sup> **SECTION 1.** A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

#### **School board membership - Prohibition.**

If a tribal government has prescribed by tribal law or resolution qualifications for eligibility for candidates for public office which are more restrictive than the laws of this state, the qualifications of candidates for eligibility for membership of a public school board of a school district located on tribal land may not be less restrictive than the qualifications for eligibility prescribed by tribal law or resolution for public office. For purposes of this section, "tribal land" means that portion of the land within the exterior boundaries of an Indian reservation which is located in the state.

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

Approved April 8, 2019

Filed April 9, 2019

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<sup>61</sup> Section 15.1-09-01.1 was amended by section 1 of Senate Bill No. 2265, chapter 149.

## CHAPTER 156

### HOUSE BILL NO. 1501

(Representatives Roers Jones, Heinert, M. Johnson, Pyle)  
(Senator Rust)

AN ACT to create and enact a new section to chapter 15.1-09 of the North Dakota Century Code, relating to suspension of a member of a school board; to amend and reenact section 54-10-15 of the North Dakota Century Code, relating to audits and suspension of school board members; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

##### **School board membership - Suspension.**

Upon the filing of a petition under chapter 44-11 for removal by the governor, the governor, in consultation with the superintendent of public instruction, may suspend a member of a school board pending the results of an audit in accordance with section 54-10-15.

**SECTION 2. AMENDMENT.** Section 54-10-15 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, upon petition, or upon request of the state court administrator.**

1. The state auditor, by duly appointed deputy auditors or other authorized agents, shall audit or review the books, records, and financial accounts of any political subdivision when ordered by the governor or the legislative audit and fiscal review committee, requested by the governing board, or upon petition of at least thirty-five percent of the qualified electors of any political subdivision enumerated in section 54-10-14 voting for the office of governor at the preceding general election or, in the case of school districts, upon petition of at least thirty-five percent of the qualified electors voting at the preceding school board election, or upon the request of the state court administrator with respect to clerk of district court services provided by a county in accordance with chapter 27-05.2. Fees for the audits must be paid in accordance with the provisions of section 54-10-14.
2. If an audit is ordered due to financial irregularities or allegations of embezzlement, the governor may suspend an elected or appointed school board member from the individual's duties if the governor determines suspension is in the best interest of the state pending the results of the audit. If the governor suspends an elected or appointed school board member, the governor immediately shall provide notice to the school board with which the suspended member serves. Within five days of receiving notice, the school board shall appoint an individual to replace the suspended member to serve during the pendency of the audit. The governor shall consult with the

superintendent of public instruction in determining whether suspension of a member of a school board is in the best interest of the state.

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

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 157

### HOUSE BILL NO. 1454

(Representatives Pyle, Dockter, M. Ruby, Schreiber-Beck)  
(Senators Schaible, Sorvaag)

AN ACT to amend and reenact section 15.1-09-34 of the North Dakota Century Code, relating to bids for school district contracts.

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

**SECTION 1. AMENDMENT.** Section 15.1-09-34 of 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~~ fifty 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 chapter 48-01.2.
  - g. School transportation services purchased under section 15.1-30-11.
  - h. Vehicle fuel purchased under section 15.1-09-34.1.
  - i. Heating fuel purchased under section 15.1-09-34.1.
  - j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.
  - k. Cooperative purchases with the office of management and budget under chapter 54-44.4.
  - l. The purchase of products from prison industries under chapter 12-48.

- m. The purchase of products from work activity centers under chapter 25-16.2.
  - n. Cooperative purchases made pursuant to a joint-powers agreement under chapter 54-40.3.
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.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 158

### SENATE BILL NO. 2150

(Senators Davison, Schaible, Vedaa)  
(Representative Monson)

AN ACT to amend and reenact section 15.1-09.1-12 of the North Dakota Century Code, relating to audits of regional education associations by the state auditor.

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

**SECTION 1. AMENDMENT.** Section 15.1-09.1-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-09.1-12. Regional education association - Audit.**

To be eligible for state funding, a regional education association must be audited, at least once every two years, by a certified public accountant ~~or~~ a licensed public accountant, or the state auditor. The audit must be presented to the state board of public school education. If any irregularities are noted, the state board of public school education may direct the superintendent of public instruction to withhold all payments to a regional education association until the board determines the irregularities have been addressed.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 159

### HOUSE BILL NO. 1434

(Representatives Richter, Hatlestad, Magrum, Zubke)  
(Senators Bekkedahl, Rust)

AN ACT to amend and reenact sections 15.1-12-26 and 15.1-12-27 of the North Dakota Century Code, relating to dissolution of school districts.

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

**SECTION 1. AMENDMENT.** Section 15.1-12-26 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-12-26. Dissolution of school district - Grounds.**

1. A county committee shall initiate proceedings to dissolve a school district and attach the property to other operating high school districts in the same county, or to a non-high school district in the same county if there are no high school districts in the same county adjacent to the district being dissolved. when it is notified in writing by the county superintendent of schools whose jurisdiction includes the administrative headquarters of the district that:
  - a. The district is financially unable to effectively and efficiently educate its students;
  - b. The district has not operated a school as required by section 15.1-12-24; or
  - c. A school board has determined that dissolution is in the best interest of its students.
2. Except as provided in subsection 3, a county committee shall initiate proceedings under section 15.1-12-27 to attach real property to an operating high school district in the same county, or to a non-high school district in the same county if there is no high school district in the same county adjacent to the district being dissolved. when it is notified in writing by the county superintendent that:
  - a. Real property has been severed from its school district by the expansion of a city and the severed portion is not contiguous with its district; or
  - b. There exists real property that does not belong to a school district.
3. If a school district reorganization plan which does not include all real property in a district is approved by the electors, the county committee shall, within forty-five days after the election, hold a hearing under section 15.1-12-27 to attach the remaining property to one or more operating high school districts in the same county, or to non-high school districts in the same county if there are no high school districts in the same county adjacent to the district being dissolved.

4. Receipt of notice by a county committee under this section:
  - a. Renders an annexation petition involving any real property in the district 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 in the district until all dissolution proceedings have been completed.
5. One or more annexation petitions may not be used to annex all of the real property in a school district to surrounding school districts.

**SECTION 2. AMENDMENT.** Section 15.1-12-27 of 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 high school districts in the same county, or to non-high school districts in the same county if there are no high school districts in the same county adjacent to the district being dissolved. 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 high school district adjacent to the dissolving district, or to non-high school districts in the same county if there are no high school districts in the same county adjacent to the district being dissolved, 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 high school district adjacent to the dissolving district, or to non-high school districts in the same county if there are no high school districts in the same county adjacent to the district being dissolved.
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 high school districts to which the dissolved district is attached;
  - d. The taxable valuation of the dissolving district and adjacent high school districts and the taxable valuation of adjacent high school districts under the proposed manner of dissolution;
  - e. The size, geographical features, and boundaries of the dissolving district and of adjacent high school districts;



- f. The number of students enrolled in the dissolving district and in adjacent high school districts;
  - g. Each school in the dissolving district and in adjacent high school districts, including its name, location, condition, accessibility, and the grade levels it offers;
  - h. The location and condition of roads, highways, and natural barriers in the dissolving district and in adjacent high school districts;
  - i. Conditions affecting the welfare of students in the dissolving district and in adjacent high school districts;
  - j. The boundaries of other governmental entities;
  - k. The educational needs of communities in the dissolving district and in adjacent high school districts;
  - l. Potential savings in school district transportation and administrative services;
  - m. The anticipated future use of the dissolving districts' buildings, sites, and playfields;
  - n. The potential for a reduction in per student valuation disparities between the high school districts to which the dissolved district is attached;
  - o. The potential to equalize or increase the educational opportunities for students from the dissolving district and for students in adjacent high school districts; and
  - p. 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 high school districts in the same county, or to non-high school districts in the same county if there are no high school districts in the same county adjacent to the district being dissolved.
  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 high school 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.
10. The state board shall provide a copy of its final findings of fact, conclusions of law, and order regarding the dissolution to job service North Dakota. If not otherwise included in the findings of fact, the state board shall also provide job service North Dakota with information on the distribution and valuation of property from the dissolving district to the receiving districts.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 160

### HOUSE BILL NO. 1287

(Representatives Satrom, Becker, Jones, Paulson, Paur, Schauer)

AN ACT to amend and reenact section 15.1-13-10 of the North Dakota Century Code, relating to initial teaching licenses for individuals completing alternative teacher certification program; to provide for a legislative management report; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 15.1-13-10 of the North Dakota Century Code is amended and reenacted as follows:

##### **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 career and technical education certificates, as otherwise established by law.
5. The board shall grant an initial license to an individual who:
  - a. Possesses a bachelor's degree from an accredited institution;
  - b. Passes a criminal history record check required by section 15.1-13-14; and
  - c. Successfully completes an alternative teacher certification program.
6. An in-state alternative teacher certification program must operate in accordance with the procedures and program approval standards and requirements set by the board for teacher education programs for the licensure of educators.
7. An out-of-state alternative teacher certification program must:
  - a. Operate in at least five states;
  - b. Have operated an alternative teacher certification program for at least ten years;

- c. Require applicants to pass a subject area and pedagogy examination, known as the professional teaching knowledge examination, to receive certification; and
- d. Allow an individual who obtains an initial or renewal license to teach in the subject areas of:
  - (1) Elementary education;
  - (2) Elementary education with a reading endorsement;
  - (3) English language arts;
  - (4) United States and world history;
  - (5) Mathematics;
  - (6) General science;
  - (7) Biology;
  - (8) Chemistry; and
  - (9) Physics.
- 8. An individual who obtains an initial license under subsection 5 is authorized to teach the subject and educational levels for which the individual has successfully completed the program described under subsection 5.
- 9. Upon completing two years of teaching under an initial license issued under subsection 5, the licensee is eligible to apply for a five-year renewal license if the individual:
  - a. Completes the program's clinical experience program and the North Dakota teacher support system approved mentor program;
  - b. Meets the requirements of section 15.1-13-35 within two years of initial licensure; and
  - c. Meets the requirements of human resources and cultural directives required coursework within two years of initial licensure which includes Native American studies, cultural diversity, strategies for creating learning environments that contribute to positive human relationships, and strategies for teaching and assessing diverse learners.

**SECTION 2. ALTERNATIVE TEACHER CERTIFICATION PROGRAM - REPORT TO LEGISLATIVE MANAGEMENT.** The education standards and practices board shall provide the legislative management a status report during the 2019-20 interim and the 2021-22 interim regarding the number of teacher licenses issued under an alternative teacher certification program, the effectiveness of the program, the quality of instruction provided under the program, and whether the program is accomplishing desired objectives. The report must include a recommendation regarding continuation of the program.

**SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2023, and after that date is ineffective.

Approved April 24, 2019

Filed April 24, 2019

## CHAPTER 161

### HOUSE BILL NO. 1347

(Representatives Zubke, Mitskog, Owens, Schreiber-Beck)  
(Senators Luick, Schaible)

AN ACT to amend and reenact section 15.1-15-02 of the North Dakota Century Code, relating to probationary teacher contracts.

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

**SECTION 1. AMENDMENT.** Section 15.1-15-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-15-02. First-year Probationary 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 probationary 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 probationary 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 probationary 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. The board of a school district may waive probationary status for a teacher with at least two years of teaching experience in the state.
7. The board of a school district shall offer, as needed, based on the teacher's evaluation, a teacher mentoring program for probationary teachers.
8. For purposes of this section, a "first-year probationary teacher" means an individual teaching for ~~the first school year since obtaining a license to teach~~ less than two years.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 162

### HOUSE BILL NO. 1089

(Education Committee)

(At the request of the Superintendent of Public Instruction)

AN ACT to amend and reenact subsection 3 of section 15.1-16-20 of the North Dakota Century Code, relating to personnel policies.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 15.1-16-20 of the North Dakota Century Code is amended and reenacted as follows:

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.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 163

### HOUSE BILL NO. 1531

(Representatives D. Johnson, Longmuir, Pyle, Schreiber-Beck, Zubke)  
(Senators Rust, Schaible)

AN ACT to amend and reenact section 15.1-18-10 of the North Dakota Century Code, relating to allowing individuals who do not have a teaching license to teach noncore subjects upon meeting certain criteria; to provide for a legislative management report; and to provide an expiration date.

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

<sup>62</sup> **SECTION 1. AMENDMENT.** Section 15.1-18-10 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-18-10. Specialty areas - Teacher qualification.**

Notwithstanding the requirements of this chapter:

1. An individual may teach art, business education, computer education, a foreign language, music, physical education, special education, and technology education at any grade level from kindergarten through grade eight, provided the individual:
  - a. Is licensed to teach by the education standards and practices board;
  - b. Is approved to teach in that area by the education standards and practices board; and
  - c. Meets all requirements set forth in rule by the superintendent of public instruction.
2. An individual may teach Native American languages provided the individual is an eminence-credentialed teacher.
3. An individual may teach in the areas of trade, industry, technical occupations, or health occupations, provided the individual has been issued a license to teach in such areas by the education standards and practices board.
4. An individual may teach in any subject, except elementary education, special education, mathematics, science, language arts, and social studies, if the individual:
  - a. Has a permit issued by the board;
  - b. Has a high school diploma;

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<sup>62</sup> Section 15.1-18-10 was also amended by section 18 of Senate Bill No. 2013, chapter 38, section 18 of Senate Bill No. 2015, chapter 40, and section 5 of Senate Bill No. 2265, chapter 149.

- c. Possesses at least four thousand hours over five years of relevant work experience in the subject area to be taught; and
  - (1) Possesses a certificate, license, or degree in the subject area to be taught; or
  - (2) Achieves a passing score on the Praxis content test.
- 5. The board of a school district may authorize an individual to teach under subsection 4 for one year, up to a maximum of three years, if:
  - a. The administrator of a school within the district submits a written request to the education standards and practices board which indicates the administrator is unable to locate a qualified applicant and requests the education standards and practices board issue a permit;
  - b. The individual successfully completes a background check conducted by the education standards and practices board; and
  - c. The education standards and practices board issues a permit to the individual.
- 6. The board may adopt rules to administer teaching permits under this section.
- 7. The board of a school district may terminate the employment of an individual with a teaching permit issued under this section at will.

**SECTION 2. ALTERNATIVE TEACHER CERTIFICATION PROGRAM - REPORT TO LEGISLATIVE MANAGEMENT.** The education standards and practices board shall provide the legislative management a status report during the 2019-20 interim and during the 2021-22 interim regarding the number of teacher licenses issued under an alternative teacher certification program, the effectiveness of the program, the quality of instruction provided under the program, and whether the program is accomplishing desired objectives. The report must include a recommendation regarding continuation of the program.

**SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2023, and after that date is ineffective.

Approved April 25, 2019

Filed April 26, 2019



## CHAPTER 164

### SENATE BILL NO. 2181

(Senators Poolman, Davison)  
(Representatives Dockter, Heinert, Schreiber-Beck)

AN ACT to amend and reenact sections 15.1-19-17 and 15.1-19-18 of the North Dakota Century Code, relating to cyberbullying of students.

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

**SECTION 1. AMENDMENT.** Section 15.1-19-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-19-17. Bullying - Definition.**

As used in sections 15.1-19-17 through 15.1-19-22:

1. "Bullying" means:

- a. Conduct that occurs in a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event and which:
  - (1) Is so severe, pervasive, or objectively offensive that it substantially interferes with the student's educational opportunities;
  - (2) Places the student in actual and reasonable fear of harm;
  - (3) Places the student in actual and reasonable fear of damage to property of the student; or
  - (4) Substantially disrupts the orderly operation of the public school; or
- b. Conduct ~~that is~~ received by a student while the student is in a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event and which:
  - (1) Is so severe, pervasive, or objectively offensive that it substantially interferes with the student's educational opportunities;
  - (2) Places the student in actual and reasonable fear of harm;
  - (3) Places the student in actual and reasonable fear of damage to property of the student; or
  - (4) Substantially disrupts the orderly operation of the public school; or

c. Conduct received or sent by a student through the use of an electronic device while the student is outside a public school, off school district premises, and off school district owned or leased property and which:

(1) Places the student in actual and reasonable fear of:

(a) Harm; or

(b) Damage to property of the student; and

(2) Is so severe, pervasive, or objectively offensive the conduct substantially interferes with the student's educational opportunities or substantially disrupts the orderly operation of the public school.

2. "Conduct" includes the use of technology or other electronic media.

**SECTION 2. AMENDMENT.** Section 15.1-19-18 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-19-18. Bullying - Prohibition by policy.**

1. ~~Before July 1, 2012, each~~Each school district shall adopt a policy providing that while at a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event, a student may not:

a. Engage in bullying; or

b. Engage in reprisal or retaliation against:

(1) A victim of bullying;

(2) An individual who witnesses an alleged act of bullying;

(3) An individual who reports an alleged act of bullying; or

(4) An individual who provides information about an alleged act of bullying.

2. The policy required by this section must:

a. Include a definition of bullying that at least encompasses the conduct described in section 15.1-19-17;

b. Establish procedures for reporting and documenting alleged acts of bullying, reprisal, or retaliation, and include procedures for anonymous reporting of such acts;

c. Establish procedures, including timelines, for school district personnel to follow in investigating reports of alleged bullying, reprisal, or retaliation;

d. Establish a schedule for the retention of any documents generated while investigating reports of alleged bullying, reprisal, or retaliation;

e. Set forth the disciplinary measures applicable to an individual who engaged in bullying or who engaged in reprisal or retaliation, as set forth in subsection 1;

- f. Require the notification of law enforcement personnel if an investigation by school district personnel ~~results in~~ have a reasonable suspicion that a crime might have occurred on or off school district property;
  - g. Establish strategies to protect a victim of bullying, reprisal, or retaliation; and
  - h. Establish disciplinary measures to be imposed upon an individual who makes a false accusation, report, or complaint pertaining to bullying, reprisal, or retaliation.
3. In developing the bullying policy required by this section, a school district shall involve parents, school district employees, volunteers, students, school district administrators, law enforcement personnel, domestic violence sexual assault organizations as defined by subsection 3 of section 14-07.1-01, and community representatives.
  4. Upon completion of the policy required by this section, a school district shall:
    - a. Ensure that the policy is explained to and discussed with its students;
    - b. File a copy of the policy with the superintendent of public instruction; and
    - c. Make the policy available in student and personnel handbooks.
  5. Each school district shall review and revise its policy as it determines necessary and shall file a copy of the revised policy with the superintendent of public instruction.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 165

### HOUSE BILL NO. 1082

(Judiciary Committee)

(At the request of the Superintendent of Public Instruction)

AN ACT to create and enact two new sections to chapter 15.1-19 of the North Dakota Century Code, relating to the prohibition on aiding and abetting sexual abuse; and to provide for a penalty.

#### 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:

##### **Prohibition on aiding and abetting sexual abuse.**

1. The state educational agency, or local educational agency that receives federal funds under section 8546 of the Elementary and Secondary Education Act [20 U.S.C. 7926] shall prohibit any individual who is a school employee, contractor, or agent, or any state educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, there is confirmation, or there is an investigation underway based on a claim the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of law.
2. Subsection 1 does not apply if:
  - a. The information has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct and any other authorities as required by federal, state, or local law; and
  - b. (1) The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;
    - (2) The school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or
    - (3) The case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within one year of the date on which the information was reported to a law enforcement agency.

**SECTION 2.** A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

**Conviction of aiding and abetting sexual abuse - Penalty.**

Any individual who is a school district employee, contractor, or agent convicted of aiding and abetting sexual abuse as described in section 1 of this Act is guilty of a class B misdemeanor.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 166

### HOUSE BILL NO. 1335

(Representatives Buffalo, Blum, Hager, O'Brien, Schneider, Vetter)  
(Senators Dwyer, Heckaman, Kannianen, Marcellais, Mathern, Oehlke)

AN ACT to create and enact a new section to chapter 15.1-19 of the North Dakota Century Code, relating to student dress code policies; and to declare an emergency.

#### 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:

**Dress code - Inclusion of traditional tribal regalia and objects of cultural significance.**

The board of a school district or a school may not establish a dress code policy that includes prohibiting a student from wearing traditional tribal regalia or objects of cultural significance at a graduation ceremony. For purposes of this section "tribal regalia" or "object of cultural significance" means an eagle feather or eagle plume.

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

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 167

### SENATE BILL NO. 2182

(Senators Poolman, Davison, Wardner)  
(Representatives Howe, Nathe, Schatz)

AN ACT to amend and reenact sections 15.1-21-02.4 and 15.1-21-02.5 of the North Dakota Century Code, relating to scholarship eligibility requirements for students on an education career pathway; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 15.1-21-02.4 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-21-02.4. North Dakota career and technical education scholarship.**

Any resident student who graduates from a high school during or after the 2010-11 school year and any resident student who completes a program of home education supervised in accordance with chapter 15.1-23 during or after the 2012-13 school year is eligible to receive a North Dakota career and technical education scholarship provided the student:

1. Completed four units of English language arts from a sequence that includes literature, composition, and speech;
2. Completed three units of mathematics, including:
  - a. One unit of algebra II, as defined by the superintendent of public instruction; and
  - b. Two units of any other mathematics, which may include one unit of computer science;
3. Completed three units of science, consisting of:
  - a. (1) One unit of biology;  
(2) One unit of chemistry; and  
(3) One unit of physics; or
  - b. (1) One unit of biology;  
(2) One unit of physical science; and  
(3) One unit or two one-half units of any other science;
4. Completed three units of social studies, including:
  - a. One unit of United States history;

- 
- b. (1) One-half unit of United States government and one-half unit of economics; or
    - (2) One unit of problems of democracy; and
  - c. One unit or two one-half units of any other social studies, which may include civics, civilization, geography and history, multicultural studies, North Dakota studies, psychology, sociology, and world history;
5. a. Completed one unit of physical education; or
    - b. One-half unit of physical education and one-half unit of health;
  6. Completed:
    - a. One unit selected from:
      - (1) Foreign languages;
      - (2) Native American languages;
      - (3) American sign language;
      - (4) Fine arts; or
      - (5) Career and technical education courses; and
    - b. Two units of a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction or an education pathway approved by the superintendent of public instruction. The education pathway must consist of two units in teaching profession and educational methodology and at least one additional unit in advanced placement or dual-credit psychology, child development, peer-to-peer leadership, or child-related careers;
  7. Completed any five additional units, two of which must be in the area of career and technical education;
  8. a. (1) Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, as determined by the superintendent of public instruction, based on all high school units in which the student was enrolled; and
    - (2) Obtained a grade of at least "C" in each unit or one-half unit; or
  - b. (1) Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, as determined by the superintendent of public instruction, based only on the units required by subsections 1 through 7; and
    - (2) Obtained a grade of at least "C" in each unit or one-half unit; and
9. Received:
    - a. A composite score of at least twenty-four on an ACT; or



- b. A score of at least five on each of three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction.

**SECTION 2. AMENDMENT.** Section 15.1-21-02.4 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02.4. North Dakota career and technical education scholarship.**

Any resident student who graduates from a high school during or after the 2010-11 school year and any resident student who completes a program of home education supervised in accordance with chapter 15.1-23 during or after the 2012-13 school year is eligible to receive a North Dakota career and technical education scholarship provided the student:

1. Completed four units of English language arts from a sequence that includes literature, composition, and speech;
2. Completed three units of mathematics, including:
  - a. One unit of algebra II, as defined by the superintendent of public instruction; and
  - b. Two units of any other mathematics, which may include one unit of computer science;
3. Completed three units of science, consisting of:
  - a. (1) One unit of biology;  
(2) One unit of chemistry; and  
(3) One unit of physics; or
  - b. (1) One unit of biology;  
(2) One unit of physical science; and  
(3) One unit or two one-half units of any other science;
4. Completed three units of social studies, including:
  - a. One unit of United States history;
  - b. (1) One-half unit of United States government and one-half unit of economics; or  
(2) One unit of problems of democracy; and
  - c. One unit or two one-half units of any other social studies, which may include civics, civilization, geography and history, multicultural studies, North Dakota studies, psychology, sociology, and world history;
5. a. Completed one unit of physical education; or  
b. One-half unit of physical education and one-half unit of health;

6. Completed:
  - a. One unit selected from:
    - (1) Foreign languages;
    - (2) Native American languages;
    - (3) American sign language;
    - (4) Fine arts; or
    - (5) Career and technical education courses; and
  - b. Two units of a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction or an education pathway approved by the superintendent of public instruction which may be governed by rules adopted by the superintendent of public instruction;
7. Completed any five additional units, two of which must be in the area of career and technical education;
8. a. (1) Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, as determined by the superintendent of public instruction, based on all high school units in which the student was enrolled; and
  - (2) Obtained a grade of at least "C" in each unit or one-half unit; or
- b. (1) Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, as determined by the superintendent of public instruction, based only on the units required by subsections 1 through 7; and
  - (2) Obtained a grade of at least "C" in each unit or one-half unit; and
9. Received:
  - a. A composite score of at least twenty-four on an ACT; or
  - b. A score of at least five on each of three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction.

**SECTION 3. AMENDMENT.** Section 15.1-21-02.5 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02.5. North Dakota academic scholarship.**

Any resident student who graduates from a high school during or after the 2010-11 school year and any resident student who completes a program of home education supervised in accordance with chapter 15.1-23 during or after the 2012-13 school year is eligible to receive a North Dakota academic scholarship provided the student:

1. Completed four units of English language arts from a sequence that includes literature, composition, and speech;
2. Completed three units of mathematics, including:
  - a. One unit of algebra II, as defined by the superintendent of public instruction;
  - b. One unit of mathematics for which algebra II, as defined by the superintendent of public instruction, is a prerequisite; and
  - c. One unit of any other mathematics, which may include computer science;
3. Completed three units of science, consisting of:
  - a. (1) One unit of biology;  
(2) One unit of chemistry; and  
(3) One unit of physics; or
  - b. (1) One unit of biology;  
(2) One unit of physical science; and  
(3) One unit or two one-half units of any other science;
4. Completed three units of social studies, including:
  - a. One unit of United States history;
  - b. (1) One-half unit of United States government and one-half unit of economics; or  
(2) One unit of problems of democracy; and
  - c. One unit or two one-half units of any other social studies, which may include civics, civilization, geography and history, multicultural studies, North Dakota studies, psychology, sociology, and world history;
5.
  - a. Completed one unit of physical education; or
  - b. One-half unit of physical education and one-half unit of health;
6.
  - a. Completed two units of:
    - (1) The same foreign language;
    - (2) The same native American language;
    - (3) American sign language; or
    - (4) Career and technical education from a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction or an education pathway, approved by the superintendent of public

instruction. The education pathway must consist of two units in teaching profession and educational methodology and at least one additional unit in advanced placement or dual-credit psychology, child development, peer-to-peer leadership, or child-related careers; and

- b. One unit selected from:
  - (1) Foreign languages;
  - (2) Native American languages;
  - (3) American sign language;
  - (4) Fine arts; or
  - (5) Career and technical education;
7. Completed any five additional units;
8. a. (1) Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, as determined by the superintendent of public instruction, based on all high school units in which the student was enrolled; and
  - (2) Obtained a grade of at least "C" in each unit or one-half unit; or
- b. (1) Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, as determined by the superintendent of public instruction, based only on the units required by subsections 1 through 7; and
  - (2) Obtained a grade of at least "C" in each unit or one-half unit;
9. Received a composite score of at least twenty-four on an ACT; and
10. a. Fulfilled any one unit requirement set forth in subsections 1 through 7 by means of an advanced placement course and examination;
- b. Fulfilled any one unit requirement set forth in subsections 1 through 4 or 6 by completion, through an early entrance program, of a nonremedial postsecondary course offered for credit at an accredited institution of higher education which has a physical presence in this state; or
- c. Fulfilled any one-half unit requirement set forth in subsections 1 through 7 by means of a dual-credit course.

**SECTION 4. EFFECTIVE DATE.** Section 2 of this Act becomes effective on August 1, 2021.

**SECTION 5. EXPIRATION DATE.** Section 1 of this Act is effective through July 31, 2021, and after that date is ineffective.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 168

### HOUSE BILL NO. 1052

(Representatives Johnston, M. Ruby, Toman, B. Koppelman, Hoverson, Simons,  
Kasper, Strinden)  
(Senators Kannianen, G. Lee, Hogue, Sorvaag)

AN ACT to amend and reenact section 15.1-23-01 of the North Dakota Century Code, relating to the definition of parent and supervise in home education.

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

**SECTION 1. AMENDMENT.** Section 15.1-23-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-01. ~~Home education -- Definition~~Definitions.**

~~For purposes of~~In this chapter, "home:

1. "Home education" means a program of education supervised by a child's parent in accordance with the requirements of this chapter.
2. "Parent" includes a child's legal guardian.
3. "Supervise" means the selection of materials, determination of an educational philosophy, and oversight of the method, manner, and delivery of instruction.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 169

### HOUSE BILL NO. 1125

(Representatives Richter, Fisher, Jones, Lefor)  
(Senators Bekkedahl, Clemens, Davison)

AN ACT to amend and reenact section 15.1-27-16 of the North Dakota Century Code, relating to plans for cooperating school districts; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15.1-27-16 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-27-16. Per student payments - Cooperating districts.**

1. If 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, the superintendent of public instruction shall, notwithstanding the provisions of section 15.1-27-03.2, create and assign a separate weighting factor that allows the cooperating districts to receive, for a period of four years, a payment rate equivalent to that which each district would have received had the cooperative plan not taken effect. The superintendent of public instruction shall compute the separate weighting factor to four decimal places and that weighting factor is effective for the duration of the cooperative plan.
2. A school district that is cooperating with another school district under a cooperative plan approved by the superintendent of public instruction, and which has taxable property located in the same city as the other school district under the cooperative plan, may not be required as part of the cooperative plan to:
  - a. Provide unduplicated grade level services; or
  - b. Share administrative personnel.

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

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 170

### HOUSE BILL NO. 1461

(Representatives Strinden, P. Anderson, Mock, Schatz)  
(Senators Davison, Kreun, Myrdal)

AN ACT to create and enact two new sections to chapter 15.1-32 of the North Dakota Century Code, relating to reading screenings and a dyslexia screening pilot program; to provide for a report to the legislative management; and to provide for an exemption.

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

**SECTION 1.** A new section to chapter 15.1-32 of the North Dakota Century Code is created and enacted as follows:

##### Reading screening.

Each public elementary school shall include in the developing and processing of assessments and screening of reading, the core components of phonetic awareness, decoding, and spelling. The screening also must be offered if requested by a parent, legal guardian, or teacher.

**SECTION 2.** A new section to chapter 15.1-32 of the North Dakota Century Code is created and enacted as follows:

##### Dyslexia screening - Pilot program - Report to legislative management - Professional development.

1. For purposes of this section:

a. "Dyslexia" means a specific learning disability that is neurological in origin and characterized by difficulties with accurate or fluent recognition of words and poor spelling and decoding abilities, independent of the individual's general intelligence level.

b. "Specialist trained in dyslexia" means an individual who:

(1) Has expertise providing training in phonological and phonemic awareness, sound and symbol relationships, alphabet knowledge, rapid naming skills, and encoding and decoding skills;

(2) Is fluent in the dyslexia intervention process; and

(3) Has training in identifying dyslexia.

2. Beginning with the 2019-20 school year and continuing through the 2022-23 school year, the superintendent of public instruction shall establish and operate a pilot program to provide early screening and intervention services for children with risk factors for dyslexia, including low phonemic awareness.

3. To be eligible to participate in the program, a school district, regional education association, or special education unit must submit an application to the superintendent which:
  - a. Identifies a method of screening children for low phonemic awareness and other risk factors for dyslexia;
  - b. Provides for the enrollment of children identified as having risk factors for dyslexia in a reading program staffed by specialists trained in dyslexia and multisensory structured language programs; and
  - c. Includes a methodology for evaluating the effects of the reading program on the identified risk factors of the child.
4. Each grantee selected to participate in the program shall:
  - a. Provide low phonemic awareness and other dyslexia risk factor screenings for children under seven years of age through a reading program established under subsection 3;
  - b. Provide reading intervention services to students identified as having dyslexia;
  - c. Administer assessments, approved by the superintendent of public instruction, to determine the effectiveness of the program in improving the reading and learning skills of children enrolled in the program; and
  - d. Provide professional development on dyslexia identification and interventions to grant participants.
5. The board of each participating grantee shall report annually to the superintendent of public instruction regarding the operation, results, and effectiveness of the pilot program in a manner prescribed by the superintendent. Before July 1, 2021, the superintendent of public instruction shall compile the information and report to the legislative management with a recommendation whether to continue the pilot program beyond the 2022-23 school year.

**SECTION 3. EXEMPTION - DYSLEXIA SCREENING PILOT PROGRAM.** Up to \$250,000 of the unexpended amount remaining from the appropriation for integrated formula payments, as authorized in subdivision 1 of section 1 of chapter 12 of the 2017 Session Laws, is not subject to the provisions of section 54-44.1-11 at the end of the 2017-19 biennium, and may be continued into the 2019-21 biennium for the purpose of providing a dyslexia screening pilot program.

Approved May 1, 2019

Filed May 2, 2019



# ELECTIONS

## CHAPTER 171

### SENATE BILL NO. 2307

(Senators Meyer, K. Roers)  
(Representatives Beadle, Grueneich, C. Johnson, Sanford)

AN ACT to create and enact a new section to chapter 16.1-02 of the North Dakota Century Code, relating to use of voter lists; and to amend and reenact sections 16.1-01-03, 16.1-02-12, and 16.1-16-01 of the North Dakota Century Code, relating to hours of polling places, information in the central voter file, and election recounts.

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

**SECTION 1. AMENDMENT.** Section 16.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **16.1-01-03. Opening and closing of the polls.**

The polls at all primary, general, and special elections must be opened at nine a.m. or at such earlier hour, but not earlier than seven a.m., ~~that may be~~ designated for any precinct by resolution of the governing body of the city or county in which such the precinct is located ~~except that in precincts in which seventy-five or fewer votes were cast in the last general election, the governing body may direct that the polls be opened at twelve noon. They~~The polls must remain open continuously until seven p.m. or such later hour, not later than nine p.m., as may be designated for a precinct by resolution of the governing body of the city or county in which the precinct is located. All electors standing in line to vote at the time the polls are set to close must be allowed to vote, but electors arriving after closing time may not be allowed to vote. The election officers present are responsible for determining who arrived in time to vote, and ~~they~~the election officers shall establish appropriate procedures for making that determination. All determinations required to be made pursuant to this section relating to polling hours must be made, and the county auditor notified of them, no later than thirty days prior to an election.

**SECTION 2. AMENDMENT.** Section 16.1-02-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **16.1-02-12. Information contained and maintained in the central voter file.**

The central voter file must contain the following information for each individual included in the file:

1. The complete legal name of the individual.
2. The complete residential address of the individual.

3. The complete mailing address of the individual, if different from the individual's residential address.
4. The unique identifier generated and assigned to the individual.
5. A status designation showing whether of the individual's ability/eligibility to vote in a precinct has been inactivated as a result of death or because the individual is no longer a resident of the precinct according to section 16.1-01-04.
6. The county, legislative district, city or township, school district, county commissioner district, if applicable, precinct name, and precinct number in which the individual resides.
7. Beginning in 2008, four years of an individual's voting history, if applicable.
8. Date of birth.
9. The individual's driver's license or nondriver identification card number issued by the department of transportation, or the unique identifier from an official form of identification issued by a tribal government to a tribal member residing in this state.
10. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper administration of the central voter file.

**SECTION 3.** A new section to chapter 16.1-02 of the North Dakota Century Code is created and enacted as follows:

**Voter lists and reports - Availability for voter list maintenance.**

The secretary of state may generate a voter list or a report generated from the central voter file to be transmitted to other states, or a consortium of states, for maintaining the integrity of elections.

**SECTION 4. AMENDMENT.** Section 16.1-16-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-16-01. Election recounts.**

A recount of any primary, special, or general election for nomination or election to a congressional, state, district, legislative, county, or city office, or for the approval or disapproval of any measure, question, or bond issue submitted to the qualified electors of this state or one of its political subdivisions must be conducted according to guidelines established by the secretary of state and as follows:

1. A recount must be conducted when:
  - a. Any individual failed to be nominated by the individual's party or to a no-party office in a primary election by one percent or less of the highest vote cast for a candidate seeking nomination from the political party for the office sought or for a candidate for the no-party office sought.

- b. Any individual failed to be elected in a general or special election by one-half of one percent or less of the highest vote cast for a candidate for that office.
  - c. A question, measure, or bond issue submitted to the qualified electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election.
2. A demand for a recount may be made by any of the following:
  - a. Any individual who failed to be nominated by the individual's party or to a no-party office in a primary election by more than one percent and less than two percent of the highest vote cast for a candidate seeking nomination from the political party for the office sought or for a candidate for the no-party office sought.
  - b. Any individual who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office.
3. A demand for a recount must be made within three days after the canvass of the votes by the county canvassing board in the case of county elections and city elections that are combined with the county and by the state canvassing board in the case of presidential, congressional, state, judicial district, multicounty district, or legislative elections. The demand must be in writing, must recite one of the conditions in subsection 2 as a basis for the recount, must contain a bond in an amount previously established by the auditor or auditors doing the recount sufficient to pay the cost of the recount, and must be filed with:
  - a. The secretary of state when the recount is for a congressional, state, district, or legislative office.
  - b. The county auditor when the recount is for a county office or city office when a city election is combined with the county.
4. Within four days after the canvass of the votes by the state canvassing board in the case of presidential, congressional, state, judicial district, multicounty district, or legislative elections, the secretary of state shall notify all the county auditors to conduct recounts as required by subsection 1 and, when a timely recount demand is received and it is in proper form, as required by subsection 2. The secretary of state shall fix the date or dates of the recounts of legislative contests to be held within seven days after giving notice to the affected auditors that recounts must be conducted. The secretary of state shall fix the date or dates of the recounts of statewide races to be held within fourteen days after giving notice to the auditors that recounts must be conducted. Within four days after the canvass of votes by the county canvassing board or other political subdivision canvassing board, the county auditor or other political subdivision election official shall fix the date for recounts limited to the county, those cities within the county which combined the election with the county, or other political subdivision. The date must be within eight days after the canvass. In all recount proceedings, the county auditor or other election official, as appropriate, shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.

5. For recounts conducted by counties of federal, state, district, and county offices, measures, and questions, the county auditor must conduct the recount and may employ up to ~~fourteen~~ qualified electors of the county to assist in the recount. The county auditor shall review all ~~paper and electronic voting system~~ properly cast ballots and associated records, ~~whether the ballots were counted at the precinct or the county canvass, and all absentee ballots cast pursuant to section 16.1-07-09 to determine which ballots were cast and counted according to the law, including that the ballots were properly initialed and that the initials found on the ballots are verified as those of the precinct election board members.~~ The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, the county auditor is disqualified from acting thereon, and the county recorder shall perform the duties required of the county auditor by this section. For recounts conducted by political subdivisions other than counties of local offices, measures, and questions, the election officer in a political subdivision shall administer a recount in the same manner as is required under this subsection for counties with respect to political subdivision offices, ballot measures, questions, or bond issues.
6. a. The individuals entitled to participate at the recount are:
  - (1) Each candidate involved in the recount, either personally or by a representative.
  - (2) A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.
- b. The individuals allowed to participate may challenge the acceptance or exclusion of any ballot. The individual 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 determines proper and then shall set the ballot aside with a notation that it was challenged and how it was counted.
7. 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 county recorder. Unless otherwise specified by law, for a political subdivision other than a county, the governing body of the political subdivision shall appoint the recount board. An individual may not serve on the recount board if the individual has anything of value bet or wagered on the result of the election, is a candidate for the office being recounted, or is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate involved in the recount. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county commissioners or other political subdivision governing body who would be qualified to serve on the board shall appoint disinterested qualified electors of the county or other political subdivision to serve as alternates. The recount board shall review all challenged ballots and on majority vote shall decide how those ballots are counted. ~~The recount board is authorized to initial all absentee ballots cast under section 16.1-07-09 that were not considered or counted 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.

8. The county auditor or other election official shall certify the results of the recount ~~no later than three days~~immediately after the recount. The recount result is the official result of the election in the county or other political subdivision. The county auditor or other election official shall prepare a corrected abstract of the votes. In a recount limited to the county, city, or other political subdivision, if the corrected abstract shows no change in the outcome of the election, no further action may be taken. If the corrected abstract changes the outcome of the election, the county auditor or other election official shall issue certificates of nomination or election accordingly and shall certify the new result of a question submitted to the qualified electors. In the case of a city election that is combined with a county election, the county auditor shall certify the new results of the election to the city auditor who is responsible for issuing new certificates of election if applicable.
9. In presidential, congressional, statewide, judicial district, multicounty district, or legislative recounts, the county auditor, ~~no later than three days~~immediately after the recount, shall ~~send by certified mail a certified copy of~~submit electronically the corrected abstract to the secretary of state according to the instructions provided by the secretary of state. The secretary of state immediately shall assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the qualified electors accordingly.
10. The expenses incurred in a recount of a county election must be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a political subdivision other than a county election must be paid by that political subdivision. The expenses incurred in a recount of a city election must be paid by the city on a warrant by the city auditor. The expenses incurred in a recount of a presidential, congressional, state, judicial district, multicounty district, or legislative election must be paid by the state from the general fund upon approval by the secretary of state of a statement of expenses received from the county auditors. The expenses incurred in a recount demanded under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or county auditor from the bond submitted by the individual requesting the recount.
11. This section also applies to city elections that are not combined with the county except the city auditor, to the extent applicable, shall perform the duties of the county auditor.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 172

### HOUSE BILL NO. 1201

(Representative Klemin)  
(Senator J. Roers)

AN ACT to amend and reenact subsection 11 of section 16.1-01-09.1 and subsection 4 of section 44-08-21 of the North Dakota Century Code, relating to recalling elected officials.

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

**SECTION 1. AMENDMENT.** Subsection 11 of section 16.1-01-09.1 of the North Dakota Century Code is amended and reenacted as follows:

11. An official may not be recalled if the recall special election would ~~be held during the same occur within one year in which of the official's office would be included on next regularly scheduled election in which the ballot official could be reelected.~~

**SECTION 2. AMENDMENT.** Subsection 4 of section 44-08-21 of the North Dakota Century Code is amended and reenacted as follows:

4. The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the filing officer certifies the petition is valid and sufficient. Other candidates for the office may be nominated in a manner provided by law and shall file nominating papers with the appropriate filing officer by the sixty-fourth day before the scheduled recall election. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint an individual 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 office is on the ballot at a regularly scheduled election occurring within one year is not subject to recall if the recall special election would occur within one year of the next regularly scheduled election in which the official could be reelected.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 173

### HOUSE BILL NO. 1036

(Legislative Management)  
(Initiated and Referred Measures Study Commission)

AN ACT to amend and reenact section 16.1-01-17 of the North Dakota Century Code, relating to fiscal impacts of referred measures.

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

**SECTION 1. AMENDMENT.** Section 16.1-01-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **16.1-01-17. Estimated fiscal impact of an initiated or referred measure.**

At least ninety days before a statewide election at which an initiated or referred measure will be voted upon, the legislative council shall coordinate the determination of the estimated fiscal impact of the initiated or referred measure. Upon notification from the secretary of state that signed petitions have been submitted for placement of an initiated or referred measure on the ballot, the legislative management shall hold hearings, receive public testimony, and gather information on the estimated fiscal impact of the measure. Each agency, institution, or department shall provide information requested in the format and time frame prescribed by the legislative council for identifying the estimated fiscal impact of an ~~initiated~~ the measure. At least thirty days before the public vote on the measure, the legislative council shall submit a statement of the estimated fiscal impact of the measure to the secretary of state. Upon receipt, the secretary of state shall include a notice within the analysis required by section 16.1-01-07 specifying where copies of the statement of the estimated fiscal impact can be obtained. Within thirty days of the close of the first complete fiscal year after the effective date of an initiated or referred measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the legislative ~~management~~ council under this section shall submit a report to the legislative council on the actual fiscal impact for the first complete fiscal year resulting from provisions of the initiated or referred measure and a comparison to the estimates provided to the legislative ~~management~~ council under this section, and the legislative council shall issue a report of the actual fiscal impact of the initiated or referred measure.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 174

### HOUSE BILL NO. 1059

(Representatives Roers Jones, Pyle, Schreiber-Beck)  
(Senators Meyer, K. Roers)

AN ACT to amend and reenact section 16.1-05-01 and subsection 4 of section 16.1-05-04 of the North Dakota Century Code, relating to part-time appointment of election workers and required presence at polling places.

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

**SECTION 1. AMENDMENT.** Section 16.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **16.1-05-01. Election officers.**

At each primary, general, and special statewide or legislative district election, and at county elections, each polling place must have an election board in attendance. The election board must consist of an election inspector and at least two election judges. Counties utilizing polling places containing more than one precinct may choose to use one election board to supervise all precincts even if the precincts are within different legislative districts so long as each district chairman of each qualified political party is given the opportunity to have representation on the election board if desired. Appointing part-time election inspectors, judges, and poll clerks is permitted if there is sufficient coverage at each polling place to satisfy the requirements of subsection 4 of section 16.1-15-04.

1. The election inspector must be selected in the following manner:
  - a. Except as provided in subdivision b, in all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and fill all vacancies occurring in those offices.
  - b. In all multiprecinct polling places containing both rural and city precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.
  - c. The election inspector shall serve until a successor is named. If an inspector fails to appear for any training session without excuse, the office is deemed vacant and the auditor shall appoint an individual to fill the vacancy.
  - d. All appointments required to be made under this section must be made at least forty days preceding an election.
2. The election judges must be appointed in the following manner:
  - a. Except as provided in subdivision b:



- (1) The election judges for each polling place must be appointed in writing by the district chairs representing the two parties that cast the largest number of votes in the state at the last general election. In polling places in which over one thousand votes are cast in any election, the county auditor may request each district party chair to appoint an additional election judge.
  - (2) 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 at least forty days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judges. If the county auditor has exhausted all practicable means to select judges from within the boundaries of the precincts within the polling place and vacancies still remain, the county auditor may select election judges who reside outside of the voting precinct but who reside within the polling place's legislative districts. If vacancies still remain, the county auditor may select election judges who reside outside of the legislative districts but who reside within the county.
- b. For special elections involving only no-party offices, the election official responsible for the administration of the election, with the approval of the majority of the members of the applicable governing body, shall appoint the election judges for each polling place.
  3. If at any time before or during an election, it appears to an election inspector, by the affidavit of two or more qualified electors of the precinct, or precincts for a multiprecinct polling place, that any election judge is disqualified under this chapter, the inspector shall remove that judge at once and shall fill the vacancy by appointing a qualified individual of the same political party as that of the judge removed. If the disqualified judge 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.
  4. The election official responsible for the administration of the election, with the approval of the majority of the members of the applicable governing body, shall appoint the poll clerks for each polling place. ~~However, no fewer than~~ At least two poll clerks must be appointed for each polling place. Poll clerks must be appointed based on their knowledge of election matters, attention to detail, and ~~on~~ any necessary technical knowledge.

**SECTION 2. AMENDMENT.** Subsection 4 of section 16.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Each member of the~~ At least one election inspector and two election judges from the election board shall remain must be present on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 175

### HOUSE BILL NO. 1035

(Legislative Management)  
(Initiated and Referred Measures Study Commission)

AN ACT to amend and reenact section 16.1-06-09 of the North Dakota Century Code, relating to initiated measures and election ballots.

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

**SECTION 1. AMENDMENT.** Section 16.1-06-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-09. Constitutional amendments and initiated and referred measures - Manner of stating question - Fiscal impact statement - Explanation of effect of vote - Order of listing.**

Constitutional amendments or measures, initiated measures, and referred measures, duly certified to the county auditor by the secretary of state, or any other question or measure to be voted on, except the election of public officers at any primary, general, or special election including officers subject to a recall petition, must, unless otherwise determined by the secretary of state, be stated in full in a legible manner on the ballot. If the secretary of state concludes the amendment or measure is too long to make it practicable to print in full, the secretary of state in consultation with the attorney general shall cause to be printed a ~~short, concise summary, which~~ that must fairly represent the substance of the constitutional amendment or initiated or referred measure. After the foregoing statement, the secretary of state shall cause to be printed ~~another short, a statement of the estimated fiscal impact of the~~ constitutional amendment or initiated or referred measure and a concise statement of the effect of an affirmative or negative vote on the constitutional amendment or initiated or referred measure. This explanatory statement must be drafted by the secretary of state in consultation with the attorney general. The words "Yes" and "No" must be printed on the ballot at the close of the statement regarding the effect of an affirmative or negative vote, in separate lines with an oval before each statement in which the voter is to indicate how the voter desires to vote on the question by darkening the oval. If two or more amendments or questions are to be voted on, they must be printed on the same ballot.

The measures to be submitted to the electors must be grouped and classified as constitutional measures, initiated statutes, or referred statutes and must be placed within such groups or classifications by the secretary of state in the order received, for the purpose of placing them on the ballot. Measures submitted by the legislative assembly must be placed first on the ballot within their classification in the order approved by the legislative assembly. Constitutional measures shall be placed first on the ballot, initiated statutes second, and referred statutes third. After all the measures have been placed within the appropriate group or classification, all measures must be numbered consecutively, without regard to the various groups or classifications.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 176

### HOUSE BILL NO. 1037

(Legislative Management)  
(Initiated and Referred Measures Study Commission)

AN ACT to amend and reenact subsection 2 of section 16.1-08.1-03.1 of the North Dakota Century Code, relating to campaign finance disclosure statements for measure committees.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 16.1-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

2. For contributions received from ~~an out-of-state~~ any contributor, a person engaged in activities described in subdivision e of subsection 13 of section 16.1-08.1-01 shall include the following information regarding each subcontributor that has stated a contribution is for the express purpose of furthering the passage or defeat of a ballot measure in the statements required under section 16.1-08.1-02.4:
  - a. A designation as to whether any person contributed in excess of one hundred dollars of the total contribution;
  - b. The name and mailing address of each subcontributor that contributed in excess of one hundred dollars of the total contribution;
  - c. The contribution amounts of each disclosed subcontributor; and
  - d. The occupation, employer, and address for the employer's principal place of business of each disclosed subcontributor.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 177

### SENATE BILL NO. 2308

(Senators Meyer, Kannianen, K. Roers)  
(Representatives Beadle, Grueneich, Vetter)

AN ACT to create and enact a new section to chapter 16.1-15 of the North Dakota Century Code, relating to counting write-in votes; and to amend and reenact sections 16.1-11-12 and 16.1-12-02.2, subsection 1 of section 16.1-12-04, section 16.1-12-07, and subsection 1 of section 16.1-15-08 of the North Dakota Century Code, relating to ballot formats, write-in votes, and certificates of nomination.

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

**SECTION 1. AMENDMENT.** Section 16.1-11-12 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-12. ~~County auditor to place applicant's~~ Applicant's name placed on ballot.**

1. Upon receipt of the petition or certificate of endorsement provided for in section 16.1-11-06 by the secretary of state and when accompanied by an affidavit as provided in section 16.1-11-10, the secretary of state shall place the name of the applicant on the primary election ballot in the party or appropriate section.
2. Upon receipt of the petition or certificate of endorsement provided for in section 16.1-11-11 by the county auditor and when accompanied by an affidavit as provided in section 16.1-11-10, the county auditor shall place the name of the applicant ~~upon~~ on the appropriate section of the no-party primary election ballot in the party or appropriate column, as the case may be.
3. A candidate whose name was placed on the ballot under this section may have the candidate's name removed from the ballot by submitting a written request to the appropriate filing officer within forty-eight hours after the filing deadline under section 16.1-11-06.

**SECTION 2. AMENDMENT.** Section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-12-02.2. ~~Counting of write-in votes -~~ Certificate of candidacy by write-in candidates.**

1. ~~An election board or canvassing board may not count or be required to officially report any write-in vote for any:~~
  - a. ~~Individual who is required to file a certificate of write-in candidacy under this section but who has not filed a certificate of candidacy and been certified as a write-in candidate.~~
  - b. ~~Fictitious person or individual clearly not eligible to qualify for the office for which the vote was cast.~~

- c. Statement concerning the candidates.
  - d. ~~Name written or printed by the voter for an office that did not also include the darkening of the oval next to the write-in line, except that a write-in candidate for a nonfederal office may make a timely written demand to a county canvassing board to identify and preserve any write-in vote cast for the office sought by the write-in candidate for canvass by the board. The candidate shall deliver the demand to the county auditor and a copy to the county recorder no later than thirty-six hours before the time the county canvassing board is scheduled to meet. A demand only may be made if the unofficial election results maintained by the county auditor demonstrate that the write-in candidate's known vote total is within the pertinent percentage limits provided in subsection 1 or 2 of section 16.1-16-01 and a statement to that effect is included in the demand. After delivery of the ballots as provided by section 16.1-15-08, the canvassing board shall review the ballots to identify any ballot that contains a write-in vote. The county canvassing board shall tally and canvass any write-in vote in the same manner as lawful or qualifying write-in votes if the canvassing board is able to clearly ascertain the intent of the voter from examining the ballot because the write-in candidate's name has been written on the ballot opposite the office to be voted for or because of any other cogent evidence of intent.~~
  - e. ~~Write-in votes which constitute five percent or less of the votes cast by the voters for the candidate receiving the most votes for that office, except in the case of a primary election in which enough votes were cast as write-in votes to qualify a name for the general election ballot. This percentage is to be calculated based on the total number of write-in votes tabulated by the voting equipment in the precincts of the county in which that office was on the ballot.~~
  - f. ~~Candidate receiving fewer than three write-in votes unless the number of votes received qualifies the candidate to be nominated or elected.~~
2. ~~Write-in votes that do not need to be individually canvassed based on the requirements of subsection 1 must be listed on the official canvass report as "scattered write-ins".~~
  3. An individual who intends to be a write-in candidate for president of the United States or for statewide or judicial district office at any election shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the election. The certificate must contain the name and address of the candidate and be signed by the candidate. Before the thirteenth day before the election, the secretary of state shall certify the names of the candidates to each county auditor as write-in candidates.
  - 4.2. An individual who intends to be a write-in candidate at the general election for president of the United States shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the general election. The certificate must contain the names and addresses of the candidates for presidential electors for that presidential candidate and a certification of acceptance signed by each candidate for elector. The candidate shall sign the certificate. The certificate may also include the name and address of a candidate for vice president of the United States and a certification of acceptance signed by that candidate. The secretary of state

shall prescribe the form of the certificate of write-in candidacy and the certification of acceptance. Before the thirteenth day before the election, the secretary of state shall certify the names of the presidential candidates and the presidential electors to each county auditor as write-in candidates.

- 5-3. An individual who intends to be a write-in candidate for any legislative district office shall file a certificate of write-in candidacy with the secretary of state. The certificate must contain the name, address, and signature of the candidate. Certificates must be filed by four p.m. on the fourth day before the election.
- 6-4. A certificate under this section is not required when:
- a. No names will appear on the ballot for an office;
  - b. The number of candidates appearing on the ballot for an office is less than the number to be elected; or
  - c. The number of candidates appearing on the ballot for a party office is less than the number of nominations a party is entitled to make.
- 7-5. An individual required to file a certificate of write-in candidacy may not seek more than one office appearing on the primary and general election ballots.

**SECTION 3. AMENDMENT.** Subsection 1 of section 16.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Certificates of nomination for nominees for offices to be filled by the qualified electors of the entire state must be filed with the secretary of state. Not less than fifty-five days before any general or special election to fill any statewide office, the secretary of state shall electronically transmit a certified list to each county auditor the names and addresses of the persons ~~individuals~~ nominated for statewide office according to this chapter as shown on the certificates of nomination filed in the secretary of state's office.

**SECTION 4. AMENDMENT.** Section 16.1-12-07 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-12-07. If nominee declines - Certificate void.**

Any person intending to decline a nomination shall do so by filing written notice of that intention with the officer with whom the certificate nominating the person is filed. If the written notice is filed with the appropriate officer ~~before~~ within forty-eight hours after four p.m. on the sixty-fourth day before the election, the nomination is void. If written notice is mailed, it must be in the physical possession of the appropriate officer ~~before~~ within forty-eight hours after four p.m. on the sixty-fourth day before the election.

**SECTION 5.** A new section to chapter 16.1-15 of the North Dakota Century Code is created and enacted as follows:

**Counting write-in votes.**

1. An election board or canvassing board may not count or be required to report officially:

- a. The number of write-in votes for an individual required to file a certificate of write-in candidacy under section 16.1-12-02.2 but who has not filed a certificate of candidacy and been certified as a write-in candidate;
  - b. The number of write-in votes for a fictitious person or individual clearly not eligible to qualify for the office for which the vote was cast;
  - c. A statement concerning a candidate under this subsection;
  - d. The number of write-in votes for a candidate for office if the number constitutes ten percent or less of the votes cast by the voters for the candidate receiving the most votes for the office or political party's nomination of a candidate for the office, except in the case of a primary election in which enough votes were cast as write-in votes to qualify a name for the general election ballot; and
  - e. The number of write-in votes for a candidate receiving fewer than three write-in votes unless the number of votes received qualifies the candidate to be nominated or elected.
2. A write-in vote for a candidate whose name is printed on the ballot will be tallied as a vote for the candidate if the voter has not voted for more candidates than allowed for the contest or voted for the same candidate more than once in that contest.
  3. A write-in vote that does not need to be canvassed individually based on the requirements of subsection 1 must be listed on the official canvass report as "scattered write-ins".

**SECTION 6. AMENDMENT.** Subsection 1 of section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

1. After generating the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the election board shall cause the ballots containing lawful write-in votes cast at the election to be placed in a suitable wrapper to form a complete wrapper for the ballots. All ballots without write-in votes shall be wrapped in a similar manner. The ballots and wrappers must then be tightly secured at the outer end to completely envelop and hold the ballots together. Ballots that are void must be secured in a separate wrapper and must be marked "void". Ballots that are spoiled must be separately secured and marked "spoiled". In sealing ballots, the various classes of ballots must be kept separate. Each wrapper must be endorsed with the names or numbers of the precincts and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the county auditor so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned in person to the county recorder. At the meeting of the county canvassing board, the county recorder shall deliver the ballots containing lawful write-in votes from all the precincts within the county if these votes were not canvassed by the polling place election board on election night according to section 16.1-12-02.2. ~~At the meeting of the county canvassing board, the county recorder shall deliver each ballot that may contain a write-in vote referenced in a demand made under subsection 1 of section 16.1-12-02.2.~~ Ballots used with

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any electronic voting system or counted by an electronic counting machine must be sealed and returned as provided in this section.

Approved March 28, 2019

Filed March 29, 2019



## CHAPTER 178

### SENATE BILL NO. 2067

(Government and Veterans Affairs Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact section 16.1-16-09 of the North Dakota Century Code, relating to appeals of election contest judgments.

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

**SECTION 1. AMENDMENT.** Section 16.1-16-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **16.1-16-09. Appeal of election contest judgment.**

An appeal to the supreme court of the judgment in an election contest action may be had by filing a notice of appeal with the clerk of the ~~trial~~supreme court within ten days of the date of the service of notice of entry of the judgment. Appeals of election contest actions must be conducted in the manner provided by the North Dakota Rules of Appellate Procedure. Election contest appeals must take precedence over regular court business so election results can be determined as soon as practicable. An appeal may be brought on for hearing before the supreme court at any time upon ten days' notice by either party and must be determined in a summary manner.

Approved March 20, 2019

Filed March 21, 2019

# ENERGY

## CHAPTER 179

### SENATE BILL NO. 2254

(Senators Kannianen, Dwyer, Patten)  
(Representatives Longmuir, Schatz, Zubke)

AN ACT to create and enact a new section to chapter 17-04 of the North Dakota Century Code, relating to liens and wind energy property rights.

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

**SECTION 1.** A new section to chapter 17-04 of the North Dakota Century Code is created and enacted as follows:

#### **Wind energy facility liens.**

Wind turbines and associated facilities that are part of an electric energy conversion facility designed for or capable of generation by wind energy conversion exceeding one-half megawatt of electricity may not be considered improvements for purposes of chapter 35-27.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 180

### SENATE BILL NO. 2207

(Senators Wanzek, Dotzenrod, Luick)  
(Representatives Brandenburg, D. Johnson, Mitskog)

AN ACT to amend and reenact section 17-06-02 of the North Dakota Century Code, relating to the removal of term limits for members of the North Dakota ethanol council.

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

**SECTION 1. AMENDMENT.** Section 17-06-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **17-06-02. Council - Membership - Election - Term.**

1. The council consists of one individual appointed by each producer.
2. Each member of the council must be ~~a resident of this state and~~ employed by a producer in the state.
3. The term of each member is four years and begins on April first following the members' appointment. The terms must be staggered by the council to ensure that an approximately equal number of appointments expire each year.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided by this section, the member's office is deemed vacant and the producer who appointed that member shall appoint another qualified individual for the remainder of the term.
5. ~~A member may not serve more than two consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.~~

Approved March 21, 2019

Filed March 22, 2019

# FIRES

## CHAPTER 181

### HOUSE BILL NO. 1288

(Representatives Schneider, Adams, P. Anderson, Dobervich, Guggisberg, Hager,  
Mitskog, O'Brien, Strinden)  
(Senator Kreun)

AN ACT to amend and reenact section 18-01-03.1 of the North Dakota Century Code, relating to duties of the fire marshal to provide education regarding fire safety code requirements.

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

**SECTION 1. AMENDMENT.** Section 18-01-03.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **18-01-03.1. Inspections - Department of human services - Education.**

1. The state fire marshal and the state fire marshal's deputies may perform fire safety inspections of those facilities required to be inspected under administrative rules of the department of human services. The state fire marshal shall charge a fee not to exceed fifty dollars for conducting these fire safety inspections in an amount determined by administrative rules adopted by the state fire marshal. Inspection fees received by the state fire marshal must be deposited into the attorney general's operating fund.
2. The state fire marshal shall provide the department of human services and designees of the fire marshal education regarding the fire safety requirements of licensed early childhood program premises, including smoke detector and carbon monoxide alarm requirements.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 182

### SENATE BILL NO. 2270

(Senator Meyer)  
(Representatives Fegley, Guggisberg, Pyle)

AN ACT to amend and reenact sections 18-01-05, 18-01-06, and 18-08-09, subsection 2 of section 18-08-12, and sections 18-09-02, 18-12-16, and 18-12-25 of the North Dakota Century Code, relating to the reporting of fires and fire losses to the state fire marshal, misconduct at fires, fire inspections of state buildings, rules for storage and handling of liquefied petroleum gases, fire alarms in school buildings, and reference data used in the fire prevention code for school buildings; to repeal section 18-01-08 of the North Dakota Century Code, relating to compensation of fire officials for reporting fires; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 18-01-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **18-01-05. Insurance companies to report fire losses to state fire marshal.**

Each insurer authorized to transact fire insurance business in this state is hereby required to report to the state fire marshal, either directly or through an approved agency, fire losses on property insured in the company, giving the name of the insured, the date of the fire, the amount of loss, the loss paid, the character of the property destroyed or damaged, and the supposed cause of the fire. Provided, however, the state fire marshal may waive the reporting of such losses which are deemed unimportant because of the small amount involved to the end that a saving in time and expense will result. This report must be mailed or sent as an electronic record to the state fire marshal as soon as possible after notice of loss is received by the company. This report must be in addition to, and not in lieu of, any report the company may be required to make by any law of this state to the insurance commissioner.

**SECTION 2. AMENDMENT.** Section 18-01-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **18-01-06. Fire chiefs and auditors or secretaries of cities and rural fire protection districts must report fires.**

Within thirty days after the occurrence of any fire in which property in a city or rural fire protection district has been destroyed or damaged ~~in an amount which exceeds twenty five dollars~~, an organization that is contracted by a political subdivision for fire protection or the fire chief of such city or rural fire protection district, if a fire department is maintained therein, or the auditor of the city or the secretary of the rural fire protection district, if a fire department is not maintained therein, shall report the cause, if known, and the origin and circumstances of the fire and the name of the owner and occupant of such property, to the state fire marshal ~~or enter the information in the national fire incident reporting system software~~. Reports shall be submitted in a form compliant and compatible with the national fire incident reporting requirements. Such report must show whether such fire was the result of

carelessness, accident, or design. The provisions of this section must be complied with, insofar as the same are applicable, if the fire is of unknown origin, regardless of the amount of damage caused thereby.

**SECTION 3. AMENDMENT.** Section 18-08-09 of the North Dakota Century Code is amended and reenacted as follows:

**18-08-09. Misconduct at fires - Penalty.**

1. Every person who, at any ~~building~~unwanted fire, disobeys the lawful orders of a public officer or firefighter, or resists or interferes with the lawful efforts of any firefighter or company of firefighters to extinguish the fire, or acts in a manner calculated to prevent the fire from being extinguished, or forbids, prevents, or dissuades others from assisting to extinguish the fire, is guilty of a class A misdemeanor.
2. As used in this section, "~~building~~unwanted fire" means a fire ~~in a dwelling, commercial building, or other building or structure used by humans as a residence or place of business, or as a storage or holding place for animals or goods not used for cooking, heating, or recreational purposes or one not incidental to the normal operations of the property.~~

**SECTION 4. AMENDMENT.** Subsection 2 of section 18-08-12 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section, a "fire inspection" is a procedure performed in accordance with standards set forth in the state building code, the fire protection code of the local jurisdiction, or the ~~code of the national fire protection association~~rules set forth in North Dakota Administrative Code chapter 10-07-01.

**SECTION 5. AMENDMENT.** Section 18-09-02 of the North Dakota Century Code is amended and reenacted as follows:

**18-09-02. State fire marshal to make rules.**

The state fire marshal shall adopt rules setting forth minimum general standards covering the design, construction, location, installation, and operation of equipment for storage, handling, transporting by tank truck, tank trailer, and utilizing liquefied petroleum gases and specifying the odorization of said gases and the degree thereof. The rules must be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons using such materials and must be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. The rules must substantially comply with national standards for the design, installation, construction of containers, and pertinent equipment for the handling and storage of liquefied petroleum gases, such as those promulgated by the international code council and the national fire protection association.

**SECTION 6. AMENDMENT.** Section 18-12-16 of the North Dakota Century Code is amended and reenacted as follows:

**18-12-16. Fire alarm systems.**

~~Every new school building and every addition to a school building must be equipped with an approved electrical, closed circuit, supervised fire alarm system with the supply fused ahead of the main switch or disconnect, except that this does not apply to one-room schools. The fire alarm disconnect must be painted red and clearly~~

marked DISCONNECT, and the control panel must have an automatic outlet which can be connected to the city system.

New fire alarm systems in additions must be connected to systems in the existing building so that all stations throughout the entire building will actuate all alarms.

Fire alarm systems must be painted red in color and be clearly marked FIRE ALARM.

Manual stations must be located in the kitchen area, public assembly areas, auditorium stages, main office, and in corridors, preferably near exits or stairs, so that it will not be necessary to travel more than one hundred feet [30.48 meters] from the door of any room to reach a station on the same floor. A pull box station must be located in the main office of a school or elsewhere if directed by the local fire authorities and connected directly to the local fire department in localities which are equipped with a pull box system. This pull box station may be independent of the fire alarm system in the school building. Automatic fire alarm systems must be provided in boiler and furnace rooms, kitchens, and dangerous storage rooms over one hundred square feet [9.29 square meters] in area.

Fire alarm signals must be located throughout the building so that persons in all areas of the building, including high noise areas, will be able to hear the signal.

Fire alarm signals must have an auditory sound distinct from other signals in use in the building for other purposes.

All fire alarm equipment must be listed for its intended use by underwriters laboratories, incorporated.

The wiring in the fire alarm systems and controls must be installed in a metallic raceway. Fire alarm systems for school buildings must be installed in accordance with the rules set forth in North Dakota Administrative Code chapter 10-07-01.

**SECTION 7. AMENDMENT.** Section 18-12-25 of the North Dakota Century Code is amended and reenacted as follows:

**18-12-25. Reference data.**

The following data must be used as reference and as an aid in the interpretation of this chapter:

1. State and local fire and building codes.
2. The National Electrical Code - national fire protection association.
3. The International Fire Code.
4. The national fire protection association.

**SECTION 8. REPEAL.** Section 18-01-08 of the North Dakota Century Code is repealed.

Approved March 28, 2019

Filed March 29, 2019

# FOODS, DRUGS, OILS, AND COMPOUNDS

## CHAPTER 183

### HOUSE BILL NO. 1469

(Representatives Mock, Devlin, Kasper, Louser, D. Ruby)  
(Senators Anderson, Dever, Heckaman, J. Lee)

AN ACT to create and enact section 19-02.1-16.3 of the North Dakota Century Code, relating to pharmacy benefits manager step therapy protocols.

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

**SECTION 1.** Section 19-02.1-16.3 of the North Dakota Century Code is created and enacted as follows:

#### 19-02.1-16.3. Pharmacy benefits managers - Step therapy protocols - Limitations.

1. As used in this section:
  - a. "Metastatic cancer" means cancer that has spread from the primary or original site to lymph nodes, nearby tissues, or other parts of the body.
  - b. "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.
  - c. "Step therapy protocol" means a protocol requiring an individual use a drug, or sequence of drugs, other than the prescription drug, or sequence of prescription drugs, the individual's health care provider recommends for the individual's treatment, before the pharmacy benefits manager or health plan allows coverage for the recommended prescription drug, or sequence of prescription drugs.
2. A pharmacy benefits manager or a health plan may not require a step therapy protocol for coverage of a recommended prescription drug, or sequence of prescription drugs, approved by the United States food and drug administration if:
  - a. The recommended prescription drug, or sequence of prescription drugs, is prescribed to treat the individual's diagnosis of metastatic cancer; and
  - b. The use of the recommended prescription drug, or sequence of prescription drugs, is consistent with the United States food and drug administration-approved indications or is supported by peer-reviewed medical literature.
3. This section does not require coverage of a nonformulary prescription drug.

Approved April 23, 2019

Filed April 24, 2019



## CHAPTER 184

### HOUSE BILL NO. 1382

(Representatives Keiser, Kasper)

AN ACT to create and enact section 19-02.1-16.3 of the North Dakota Century Code, relating to pharmacy mail order and home delivery services; and to provide an effective date.

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

**SECTION 1.** Section 19-02.1-16.3 of the North Dakota Century Code is created and enacted as follows:

##### **Mail order and home delivery - Prior consent - Refund.**

1. If a pharmacy offers a prescription through home delivery or mail order delivery services, the pharmacy may not initiate delivery of a refill unless:
  - a. The pharmacy obtains prior consent from the patient or the patient's authorized representative; or
  - b. The pharmacy provides the patient with notice of the upcoming delivery through more than one communication attempt, by different means, and the patient or the patient's authorized representative does not respond indicating the patient does not want the refill.
2. If a pharmacy delivers a refill in violation of subsection 1:
  - a. Within thirty days of the patient's or the patient's authorized representative's notification of the pharmacy of the unwanted refill, the pharmacy shall refund all payments received by the pharmacy relating to the unwanted refill.
  - b. Within thirty days of the pharmacy's, patient's, or patient's authorized representative's notification of the health plan or the pharmacy benefits manager of the unwanted refill, the health plan and pharmacy benefits manager shall refund all payments received relating to the unwanted refill.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective January 1, 2020.

Approved April 24, 2019

Filed April 24, 2019

## CHAPTER 185

### HOUSE BILL NO. 1113

(Judiciary Committee)

(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact subsection 18 of section 19-03.1-01, section 19-03.1-05, subsection 7 of section 19-03.1-07, subsection 4 of section 19-03.1-09, subsection 7 of section 19-03.1-11, and subsection 5 of section 19-03.1-13 of the North Dakota Century Code, relating to the definition of marijuana and the scheduling of controlled substances; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 18 of section 19-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

18. "Marijuana" means all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; ~~the resinous product of the combustion~~resin extracted from any part of the plant ~~cannabis~~; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant ~~or~~ its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term marijuana does not include hemp as defined in title 4.1.

**SECTION 2. AMENDMENT.** Section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

#### 19-03.1-05. Schedule I.

1. The controlled substances listed in this section are included in schedule I.
2. Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:
  - a. Acetylmethadol.
  - b. Allyprodine.
  - c. Alphacetylmethadol.
  - d. Alphameprodine.

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- e. Alphamethadol.
  - f. Benzethidine.
  - g. Betacetylmethadol.
  - h. Betameprodine.
  - i. Betamethadol.
  - j. Betaprodine.
  - k. Clonitazene.
  - l. Dextromoramide.
  - m. Diampromide.
  - n. Diethylthiambutene.
  - o. Difenoxylin.
  - p. Dimenoxadol.
  - q. Dimepheptanol.
  - r. Dimethylthiambutene.
  - s. Dioxaphetyl butyrate.
  - t. Dipipanone.
  - u. Ethylmethylthiambutene.
  - v. Etonitazene.
  - w. Etoxidine.
  - x. Furethidine.
  - y. Hydroxypethidine.
  - z. Ketobemidone.
  - aa. Levomoramide.
  - bb. Levophenacetylmorphan.
  - cc. Morpheridine.
  - dd. MPPP (also known as 1-methyl-4-phenyl-4-propionoxypiperidine).
  - ee. Noracymethadol.
  - ff. Norlevorphanol.

- gg. Normethadone.
- hh. Norpipanone.
  - ii. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-acetoxypiperidine).
- jj. Phenadoxone.
- kk. Phenampromide.
  - ll. Phenomorphan.
- mm. Phenoperidine.
- nn. Piritramide.
- oo. Proheptazine.
- pp. Properidine.
- qq. Propiram.
  - rr. Racemoramide.
- ss. Tilidine.
- tt. Trimeperidine.
- uu. 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]cyclohexyl-N-methylbenzamide (also known as U-47700).
- vv. 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (also known as MT-45).
- ww. 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (also known as AH-7921).
- xx. Fentanyl derivatives. Unless specifically excepted or unless listed in another schedule or are not FDA approved drugs, and are derived from N-(1-(2-Phenylethyl)-4-piperidyl)-N-phenylpropanamide (Fentanyl) by any substitution on or replacement of the phenethyl group, any substitution on the piperidine ring, any substitution on or replacement of the propanamide group, any substitution on the anilido phenyl group, or any combination of the above. Examples include:
  - (1) N-[1-(1-methyl-2-phenethyl)-4-piperidyl]-N-phenylacetamide (also known as Acetyl-alpha-methylfentanyl).
  - (2) N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine (also known as Alpha-methylfentanyl).
  - (3) N-[1-methyl-2-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (also known as Alpha-methylthiofentanyl).
  - (4) N-[1-(2-hydroxy-2-phenethyl)-4-piperidyl]-N-phenylpropanamide (also known as Beta-hydroxyfentanyl).

- (5) N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-phenylpropanamide (also known as Beta-hydroxy-3-methylfentanyl).
- (6) N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide (also known as 3-Methylfentanyl).
- (7) N-[3-methyl-1-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide (also known as 3-Methylthiofentanyl).
- (8) N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidiny]propanamide (also known as Para-fluorofentanyl).
- (9) N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidiny]propanamide (also known as Thiofentanyl).
- (10) N-(1-phenylethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (also known as Furanyl Fentanyl).
- (11) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide; N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide (also known as Butyryl Fentanyl).
- (12) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide; N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidiny]-N-phenylpropanamide (also known as Beta-Hydroxythiofentanyl).
- (13) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (also known as Acetyl Fentanyl).
- (14) N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]prop-2-enamide N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (also known as Acrylfentanyl Acryl Fentanyl).
- (15) N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny]pentanamide N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide (also known as Valeryl Fentanyl).
- (16) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (also known as 4-Fluoroisobutyryl Fentanyl).
- (17) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide (also known as Ortho-fluorofentanyl, 2-Fluorofentanyl).
- (18) N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide (also known as Tetrahydrofuranyl Fentanyl).
- (19) 2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (also known as Methoxyacetyl Fentanyl).
- (20) N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide (also known as Cyclopropyl Fentanyl).
- (21) N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide (also known as Ocfentamil).

- (22) N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide (also known as Cyclopentyl Fentanyl).
- (23) N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide (also known as Isobutyryl Fentanyl).
- (24) N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (also known as Para-chloroisobutyryl Fentanyl).
- (25) N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide (also known as Para-methoxybutyryl Fentanyl).
- (26) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide (also known as Para-fluorobutyryl Fentanyl).
4. Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- Acetorphine.
  - Acetyldihydrocodeine.
  - Benzylmorphine.
  - Codeine methylbromide.
  - Codeine-N-Oxide.
  - Cyprenorphine.
  - Desomorphine.
  - Dihydromorphine.
  - Drotebanol.
  - Etorphine (except hydrochloride salt).
  - Heroin.
  - Hydromorphinol.
  - Methyldesorphine.
  - Methyldihydromorphine.
  - Morphine methylbromide.
  - Morphine methylsulfonate.
  - Morphine-N-Oxide.
  - Myrophine.

- s. Nicocodeine.
  - t. Nicomorphine.
  - u. Normorphine.
  - v. Pholcodine.
  - w. Thebacon.
5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):
- a. Alpha-ethyltryptamine, its optical isomers, salts, and salts of isomers (also known as etryptamine;  $\alpha$ -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).
  - b. Alpha-methyltryptamine.
  - c. 4-methoxyamphetamine (also known as 4-methoxy- $\alpha$ -methylphenethylamine; paramethoxyamphetamine; PMA).
  - d. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy- $\alpha$ -methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA).
  - e. Hashish.
  - f. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).
  - g. Lysergic acid diethylamide.
  - h. Marijuana.
  - i. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro- 6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
  - j. Peyote (all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or its extracts).
  - k. N-ethyl-3-piperidyl benzilate.
  - l. N-methyl-3-piperidyl benzilate.
  - m. Psilocybin.

- n. Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (*cannabis* plant), as well as synthetic equivalents of the substances contained in the *cannabis* plant, or in the resinous extractives of such plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant; excluding tetrahydrocannabinols found in hemp as defined in title 4.1; such as the following:
- (1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers. Other names: Delta-9-tetrahydrocannabinol.
  - (2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.
  - (3) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.
- (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- o. Cannabinoids, synthetic. It includes the chemicals and chemical groups listed below, including their homologues, salts, isomers, and salts of isomers. The term "isomer" includes the optical, position, and geometric isomers.
- (1) Indole carboxaldehydes. Any compound structurally derived from 1H-indole-3-carboxaldehyde or 1H-2-carboxaldehyde substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranilylmethyl, benzyl, or halo benzyl group; and, at the hydrogen of the carboxaldehyde by a phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, pyrrolidinyl, piperazinyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:
    - (a) Substitution to the indole ring to any extent; or
    - (b) Substitution to the phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, pyrrolidinyl, piperazinyl, or propionaldehyde group to any extent; or
    - (c) A nitrogen heterocyclic analog of the indole ring; or
    - (d) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
    - (e) Examples include:
      - [1] 1-Pentyl-3-(1-naphthoyl)indole - Other names: JWH-018 and AM-678.
      - [2] 1-Butyl-3-(1-naphthoyl)indole - Other names: JWH-073.



- [3] 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole - Other names: JWH-081.
- [4] 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole - Other names: JWH-200.
- [5] 1-Propyl-2-methyl-3-(1-naphthoyl)indole - Other names: JWH-015.
- [6] 1-Hexyl-3-(1-naphthoyl)indole - Other names: JWH-019.
- [7] 1-Pentyl-3-(4-methyl-1-naphthoyl)indole - Other names: JWH-122.
- [8] 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole - Other names: JWH-210.
- [9] 1-Pentyl-3-(4-chloro-1-naphthoyl)indole - Other names: JWH-398.
- [10] 1-(5-fluoropentyl)-3-(1-naphthoyl)indole - Other names: AM-2201.
- [11] 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole - Other names: RCS-8.
- [12] 1-Pentyl-3-(2-methoxyphenylacetyl)indole - Other names: JWH-250.
- [13] 1-Pentyl-3-(2-methylphenylacetyl)indole - Other names: JWH-251.
- [14] 1-Pentyl-3-(2-chlorophenylacetyl)indole - Other names: JWH-203.
- [15] 1-Pentyl-3-(4-methoxybenzoyl)indole - Other names: RCS-4.
- [16] (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole) - Other names: AM-694.
- [17] (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone - Other names: WIN 48,098 and Pravadoline.
- [18] (1-Pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone -- Other names: UR-144.
- [19] (1-(5-fluoropentyl)indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: XLR-11.
- [20] (1-(2-morpholin-4-ylethyl)-1H-indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: A-796,260.
- [21] (1-(5-fluoropentyl)-1H-indazol-3-yl)(naphthalen-1-yl)methanone -- Other names: THJ-2201.

- [22] 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone -- Other names: THJ-018.
- [23] (1-(5-fluoropentyl)-1H-benzo[d]imidazol-2-yl)(naphthalen-1-yl)methanone - Other names: FUBIMINA.
- [24] 1-[(N-methylpiperidin-2-yl)methyl]-3-(adamant-1-oyl) indole - Other names: AM-1248.
- [25] 1-Pentyl-3-(1-adamantoyl)indole - Other names: AB-001 and JWH-018 adamantyl analog.
- (2) Indole carboxamides. Any compound structurally derived from 1H-indole-3-carboxamide or 1H-2-carboxamide substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and, at the nitrogen of the carboxamide by a phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:
- (a) Substitution to the indole ring to any extent; or
- (b) Substitution to the phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent; or
- (c) A nitrogen heterocyclic analog of the indole ring; or
- (d) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
- (e) Examples include:
- [1] N-Adamantyl-1-pentyl-1H-indole-3-carboxamide - Other names: JWH-018 adamantyl carboxamide, APICA, SDB-001, and 2NE1.
- [2] N-Adamantyl-1-fluoropentylindole-3-carboxamide - Other names: STS-135.
- [3] N-Adamantyl-1-pentyl-1H-Indazole-3-carboxamide - Other names: AKB 48 and APINACA.
- [4] N-1-naphthalenyl-1-pentyl-1H-indole-3-carboxamide - Other names: NNEI and MN-24.
- [5] N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide - Other names: ADBICA.
- [6] (S)-N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide - Other names: AB-PINACA.

- [7] N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide - Other names: AB-FUBINACA.
- [8] (S)-N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide - Other names: 5-Fluoro AB-PINACA and 5F-AB-PINACA.
- [9] N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide - Other names: ADB-PINACA.
- [10] N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide - Other names: AB-CHMINACA.
- [11] N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide - Other names: ADB-FUBINACA.
- [12] N-((3s,5s,7s)-adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide - Other names: FUB-AKB48 and AKB48 N-(4-fluorobenzyl) analog.
- [13] 1-(5-fluoropentyl)-N-(quinolin-8-yl)-1H-indazole-3-carboxamide - Other names: 5-fluoro-THJ.
- [14] (S)-methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate - Other names: 5-fluoro AMB and 5F-AMB.
- [15] methyl (1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-L-valinate-2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate - Other names: FUB-AMB, MMB-FUBINACA, and AMB-FUBINACA.
- [16] N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide - Other names: MAB-CHMINACA and ADB-CHMINACA.
- [17] Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate - Other names: 5F-ADB and 5F-MDMB-PINACA.
- [18] N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide - Other names: 5F-APINACA and 5F-AKB48.
- [19] Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate - Other names: MDMB-CHMICA and MMB-CHMINACA.
- [20] Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate - Other names: MDMB-FUBINACA.
- [21] 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide - Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA; SGT-78.

[22] methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate - Other names: MMB-CHMICA, AMB-CHMICA.

[23] 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide - Other names: 5F-CUMYL-P7AICA.

- (3) Indole carboxylic acids. Any compound structurally derived from 1H-indole-3-carboxylic acid or 1H-2-carboxylic acid substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranlylmethyl, benzyl, or halo benzyl group; and, at the hydroxyl group of the carboxylic acid by a phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:

- Substitution to the indole ring to any extent; or
- Substitution to the phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, propionaldehyde group to any extent; or
- A nitrogen heterocyclic analog of the indole ring; or
- A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
- Examples include:

[1] 1-(cyclohexylmethyl)-1H-indole-3-carboxylic acid 8-quinoliny ester - Other names: BB-22 and QUCHIC.

[2] naphthalen-1-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate - Other names: FDU-PB-22.

[3] 1-pentyl-1H-indole-3-carboxylic acid 8-quinoliny ester - Other names: PB-22 and QUPIC.

[4] 1-(5-Fluoropentyl)-1H-indole-3-carboxylic acid 8-quinoliny ester - Other names: 5-Fluoro PB-22 and 5F-PB-22.

[5] quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate - Other names: FUB-PB-22.

[6] naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate - Other names: NM2201 and CBL2201.

- (4) Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or

not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

- (a) 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane - Other names: JWH-175.
  - (b) 1-Pentyl-1H-indol-3-yl-(4-methyl-1-naphthyl)methane - Other names: JWH-184.
- (5) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone - Other names: JWH-307.
- (6) Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane - Other names: JWH-176.
- (7) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not substituted in the cyclohexyl ring to any extent. Examples include:
- (a) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: CP 47,497.
  - (b) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: Cannabicyclohexanol and CP 47,497 C8 homologue.
  - (c) 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol - Other names: CP 55,940.
- (8) Others specifically named:
- (a) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: HU-210.

- (b) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: Dexanabinol and HU-211.
- (c) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone - Other names: WIN 55,212-2.
- (d) Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone - Other names: CB-13.
- p. Substituted phenethylamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from phenylethan-2-amine by substitution on the phenyl ring in any of the following ways, that is to say, by substitution with a fused methylenedioxy ring, fused furan ring, or fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems.
- (1) Whether or not the compound is further modified in any of the following ways, that is to say:
- (a) By substitution of phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups;
- (b) By substitution at the 2-position by any alkyl groups; or
- (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl, methylenedioxybenzyl, or methoxybenzyl groups.
- (2) Examples include:
- (a) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine).
- (b) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine).
- (c) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine).
- (d) 2-(2,5-Dimethoxyphenyl)ethanamine (also known as 2C-H or 2,5-Dimethoxyphenethylamine).
- (e) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine).
- (f) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine).

- (g) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine).
- (h) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine).
- (i) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine).
- (j) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine (also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine).
- (k) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine (also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine).
- (l) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine (also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine).
- (m) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane (also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine).
- (n) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine (also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine).
- (o) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-B-NBOMe; 2,5B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine).
- (p) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-I-NBOMe; 2,5I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine).
- (q) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine (also known as mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine).
- (r) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-C-NBOMe; 2,5C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine).
- (s) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine (also known as 2CB-5-hemiFLY).
- (t) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine (also known as 2C-B-FLY).
- (u) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyranof[2,3-g]chromen-5-yl)ethanamine (also known as 2C-B-butterFLY).
- (v) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane (also known as 2C-B-FLY-NBOMe).

- (w) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine (also known as bromo-benzodifuranyl-isopropylamine or bromo-dragonFLY).
  - (x) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine (also known as 2C-I-NBOH or 2,5I-NBOH).
  - (y) 5-(2-Aminopropyl)benzofuran (also known as 5-APB).
  - (z) 6-(2-Aminopropyl)benzofuran (also known as 6-APB).
  - (aa) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran (also known as 5-APDB).
  - (bb) 6-(2-Aminopropyl)-2,3,-dihydrobenzofuran (also known as 6-APDB).
  - (cc) 2,5-dimethoxy-amphetamine (also known as 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA).
  - (dd) 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).
  - (ee) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).
  - (ff) 5-methoxy-3,4-methylenedioxy-amphetamine.
  - (gg) 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM and STP).
  - (hh) 3,4-methylenedioxy amphetamine (also known as MDA).
  - (ii) 3,4-methylenedioxymethamphetamine (also known as MDMA).
  - (jj) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA).
  - (kk) 3,4,5-trimethoxy amphetamine.
  - (ll) Mescaline (also known as 3,4,5-trimethoxyphenethylamine).
- q. Substituted tryptamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from 2-(1H-indol-3-yl)ethanamine (i.e., tryptamine) by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha-position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups. Examples include:
- (1) 5-methoxy-N,N-diallyltryptamine (also known as 5-MeO-DALT).
  - (2) 4-acetoxy-N,N-dimethyltryptamine (also known as 4-AcO-DMT or O-Acetylpsilocin).
  - (3) 4-hydroxy-N-methyl-N-ethyltryptamine (also known as 4-HO-MET).



- (4) 4-hydroxy-N,N-diisopropyltryptamine (also known as 4-HO-DIPT).
  - (5) 5-methoxy-N-methyl-N-isopropyltryptamine (also known as 5-MeO-MiPT).
  - (6) 5-methoxy-N,N-dimethyltryptamine (also known as 5-MeO-DMT).
  - (7) Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).
  - (8) 5-methoxy-N,N-diisopropyltryptamine (also known as 5-MeO-DiPT).
  - (9) Diethyltryptamine (also known as N,N-Diethyltryptamine; DET).
  - (10) Dimethyltryptamine (also known as DMT).
  - (11) Psilocyn.
    - r. 1-[3-(trifluoromethylphenyl)]piperazine (also known as TFMPP).
    - s. 1-[4-(trifluoromethylphenyl)]piperazine.
    - t. 6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (also known as 5,6-Methylenedioxy-2-aminoindane or MDAI).
    - u. 2-(Ethylamino)-2-(3-methoxyphenyl)cyclohexanone (also known as Methoxetamine or MXE).
    - v. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).
    - w. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).
    - x. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl)cyclohexyl] piperidine; 2-Thienylanalog of phencyclidine; TCP, TCP).
    - y. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).
    - z. *Salvia divinorum*, salvinorin A, or any of the active ingredients of *salvia divinorum*.
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.

d-c. Methaqualone.

7. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
- Aminorex (also known as 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine).
  - Cathinone.
  - Substituted cathinones. Any compound, material, mixture, preparation, or other product, unless listed in another schedule or an approved food and drug administration drug (e.g., bupropion, pyrovalerone), structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
    - By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
    - By substitution at the 3-position with an acyclic alkyl substituent;
    - By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; or
    - By inclusion of the 2-amino nitrogen atom in a cyclic structure.

Some trade or other names:

- 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone (also known as MDPPP).
- 3,4-Methylenedioxy-N-ethylcathinone (also known as Ethylone, MDEC, or bk-MDEA).
- 3,4-Methylenedioxy-N-methylcathinone (also known as Methylone or bk-MDMA).
- 3,4-Methylenedioxyprovalerone (also known as MDPV).
- 3,4-Dimethylmethcathinone (also known as 3,4-DMMC).
- 2-(methylamino)-1-phenylpentan-1-one (also known as Pentadrone).
- 2-Fluoromethcathinone (also known as 2-FMC).
- 3-Fluoromethcathinone (also known as 3-FMC).
- 4-Methylethcathinone (also known as 4-MEC and 4-methyl-N-ethylcathinone).

- (j) 4-Fluoromethcathinone (also known as Flephedrone and 4-FMC).
  - (k) 4-Methoxy-alpha-pyrrolidinopropiophenone (also known as MOPPP).
  - (l) 4-Methoxymethcathinone (also known as Methedrone; bk-PMMA).
  - (m) 4<sup>1</sup>-Methyl-alpha-pyrrolidinobutiophenone (also known as MPBP).
  - (n) Alpha-methylamino-butyrophenone (also known as Buphedrone or MABP).
  - (o) Alpha-pyrrolidinobutiophenone (also known as alpha-PBP).
  - (p) Alpha-pyrrolidinopropiophenone (also known as alpha-PPP).
  - (q) Alpha-pyrrolidinopentiophenone (also known as Alpha-pyrrolidinovalerophenone or alpha-PVP).
  - (r) Beta-keto-N-methylbenzodioxolylbutanamine (also known as Butylone or bk-MBDB).
  - (s) Ethcathinone (also known as N-Ethylcathinone).
  - (t) 4-Methylmethcathinone (also known as Mephedrone or 4-MMC).
  - (u) Methcathinone.
  - (v) N,N-dimethylcathinone (also known as metamfepramone).
  - (w) Naphthylpyrovalerone (naphyrone).
  - (x) B-Keto-Methylbenzodioxolylpentanamine (also known as Pentylone).
  - (y) 4-Methyl-alpha-pyrrolidinopropiophenone (also known as 4-MePPP and MPPP).
  - (z) 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one (also known as Ephyllone and N-Ethylpentylone).
- d. Fenethylamine.
- e. Fluoroamphetamine.
- f. Fluoromethamphetamine.
- g. (±)cis-4-methylaminorex (also known as (±)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).
- h. N-Benzylpiperazine (also known as BZP, 1-benzylpiperazine).
- i. N-ethylamphetamine.
- j. N, N-dimethylamphetamine (also known as N,N-alpha-trimethylbenzeneethanamine; N,N-alpha-trimethylphenethylamine).

**SECTION 3. AMENDMENT.** Subsection 7 of section 19-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

7. Hallucinogenic substances.

- a. Nabilone [another name for nabilone ( $\pm$ )-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9Hdibenzo [b, d] pyran-9-one].
- b. Dronabinol [(-)-delta-9-trans tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the federal food and drug administration.

**SECTION 4. 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. Embutramide.

f. Gamma-hydroxybutyric acid in a United States food and drug administration-approved drug product.

g. Ketamine.

- h. Lysergic acid.
- i. Lysergic acid amide.
- j. Methyprylon.
- k. Perampanel.
- l. Sativex or its successor name as determined by the federal food and drug administration.
- m. Sulfondiethylmethane.
- n. Sulfonethylmethane.
- o. Sulfonmethane.
- p. Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-2(2-fluorophenyl)-6, 8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, fluprazapon.

**SECTION 5. AMENDMENT.** Subsection 7 of section 19-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

- 7. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of:
  - a. Pentazocine, including its salts.
  - b. Butorphanol, including its optical isomers.
  - c. Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1*H*-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.
  - d. ~~Epidiolex or its successor name as determined by the United States food and drug administration.~~

**SECTION 6. AMENDMENT.** Subsection 5 of section 19-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

- 5. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible:
  - a. Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (also referred to as BRV; UCB-34714; Briviact) (including its salts).

- b. Ezogabine N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester.
- c. Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide].
- d. Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].
- e. Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the federal food and drug administration, which contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent weight for weight residual tetrahydrocannabinols.
- f. Gabapentin [2-[1-(aminomethyl) cyclohexyl] acetic acid].

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 186

### HOUSE BILL NO. 1050

(Representatives Roers Jones, Satrom)  
(Senators Unruh, Poolman, K. Roers, Myrdal)

AN ACT to amend and reenact subsection 7 of section 12.1-32-01, section 19-03.1-22.3, subdivision d of subsection 8 of section 19-03.1-23, section 19-03.4-03, and subdivision i of subsection 5 of section 39-08-01 of the North Dakota Century Code, relating to multiple convictions of the same infraction, the possession and ingestion of marijuana, the possession of drug paraphernalia and the placement of an individual in a drug and alcohol treatment program by the department of corrections and rehabilitation; to provide for a legislative management study; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who ~~has, within one year prior to before~~ has been previously convicted previously at least twice of an the same offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint ~~shall~~ must specify that the offense is a misdemeanor.

**SECTION 2. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

A

1. Except as provided in subsection 2, a person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class B misdemeanor if the controlled substance is marijuana. Otherwise, the offense is a class A misdemeanor. This subsection does not apply to ingesting, inhaling, injecting, or otherwise taking into the body marijuana.
2. A person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana, unless the substance was medical marijuana obtained in accordance with chapter 19-24.1, is guilty of a class B misdemeanor.
3. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken

into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

<sup>63</sup> **SECTION 3. AMENDMENT.** Subdivision d of subsection 8 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

d. A person who violates this subsection ~~regarding possession~~by possessing:

(1) Marijuana in an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.

(2) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.

(3) More than 500 grams of marijuana is guilty of a class A misdemeanor.

**SECTION 4. AMENDMENT.** Section 19-03.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

1. 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, or conceal a controlled substance in violation of chapter 19-03.1. ~~Any~~A person violating this subsection 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, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1.
2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this title, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.
3. 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, or repack, ~~store, contain, or conceal~~ marijuana in violation of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor.
4. A person may not use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana or possess with the intent to use drug paraphernalia to store or contain marijuana in violation of chapter 19-03.1. A person violating this subsection is guilty of a ~~class B misdemeanor~~infraction.
5. A person sentenced to the legal and physical custody of the department of corrections and rehabilitation under this section may be placed in a drug and

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<sup>63</sup> Section 19-03.1-23 was also amended by section 2 of House Bill No. 1164, chapter 188, and section 2 of House Bill No. 1183, chapter 187.



alcohol treatment program as designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the person from imprisonment to begin any court-ordered period of probation. If the person is not subject to court-ordered probation, the court may order the person to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.

6. Probation under this section may include placement in another facility, treatment program, or drug court. If the person is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

<sup>64</sup> **SECTION 5. AMENDMENT.** Subdivision i of subsection 5 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

- i. If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the individual in an alcohol treatment program designated by the department. Upon the individual's successful completion of the alcohol treatment program, the department shall release the individual from imprisonment to begin the court-ordered period of probation. If there is not any court-ordered period of probation, the court shall~~may~~ order the individual to serve the remainder of the sentence of imprisonment on supervised probation and the terms and conditions must include participation in the twenty-four seven sobriety program and any terms and conditions of probation previously imposed by the court. Probation under this subsection may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody. Individuals incarcerated under this section subsequent to a second probation revocation are not eligible for release from imprisonment upon the successful completion of treatment.

**SECTION 6. LEGISLATIVE MANAGEMENT STUDY.** During the 2019-20 interim, the legislative management shall consider studying the implications of the potential adoption of an initiated measure allowing the use of recreational marijuana. The study must consider the potential benefits and detriments of legalizing recreational marijuana with respect to:

1. The state's economy, including unemployment and homelessness rates; potential tax revenues and job opportunities; spending on public health and safety programs, including law enforcement agencies and drug treatment programs; and tourism, real estate, construction, and banking;
2. Minors, including the rate of drug usage, the effects of marijuana on developing brains, and high school dropout rates;
3. The insurance industry, including health, automobile, and life insurance;
4. The legal system, including crime rates, the prison population, and rates of usage of other drugs;

<sup>64</sup> Section 39-08-01 was also amended by section 1 of House Bill No. 1534, chapter 322.

5. Workers' compensation and work-related accidents;
6. Public health and safety; and
7. The medical marijuana program.

The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 187

### HOUSE BILL NO. 1183

(Representatives Kading, Blum, Meier, Schneider, Vetter)  
(Senators O. Larsen, D. Larson)

AN ACT to amend and reenact subsection 1 of section 12.1-32-02.1, sections 19-03.1-23 and 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, subsection 2 of section 29-29.5-08, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to mandatory sentences for offenses relating to controlled substances; and to repeal section 19-03.1-23.2 of the North Dakota Century Code, relating to deferred imposition of sentence and suspension of sentence.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
  - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or
  - b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, 3, or 8~~7~~ of section 19-03.1-23.

<sup>65</sup> **SECTION 2. AMENDMENT.** Section 19-03.1-23 of 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 a person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but a person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. A 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 B felony ~~and must be sentenced:~~

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<sup>65</sup> Section 19-03.1-23 was also amended by section 3 of House Bill No. 1050, chapter 186, and section 2 of House Bill No. 1164, chapter 188.

- (1) For a second offense, to imprisonment for at least three years.
  - (2) For a third or subsequent offense, to imprisonment for ten years.
- b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B 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 second offense, to imprisonment for at least two years.
  - (2) For a third or subsequent offense, to imprisonment for five years.
- c. A substance classified in schedule IV, is guilty of a class C felony ~~and must be sentenced:~~
- (1) For a second offense, to imprisonment for at least three months.
  - (2) For a third offense, to imprisonment for at least six months.
  - (3) For a fourth or subsequent offense, to imprisonment for three years.
- d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 8Z or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under ~~subsection 1 and 4.~~ subsection 1 and 4.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, 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 counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
  - b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
  - c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
4. ~~a. For second or subsequent offenses, in addition to any other penalty imposed under this section, if the person who violates this chapter was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the person is subject to, and the court shall impose a term of imprisonment of at least four years.~~

- ~~b. Which is to run consecutively to any other sentence imposed. It is not a defense that the defendant did not know the age of a person protected under subdivision a.~~
- ~~c. The penalty in subdivision a does not apply to a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana.~~
5. 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 a second or subsequent offense, to imprisonment for at least three years.
- 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.
- ~~6-5.~~ Except for a prior conviction equivalent to a misdemeanor violation of subsection ~~87~~ or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this title committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under ~~subsection~~ subsection 1, 4, and 5. 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.
- ~~7-6.~~ It is unlawful for a person to willfully, as defined in section 12.1-02-02:
- a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.
- A person who violates this subsection is guilty of a class C felony.
- ~~8-7.~~ a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog 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.
- b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense

under this subsection and a class C felony for a second or subsequent offense under this subsection.

- c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves marijuana.
- d. A person who violates this subsection regarding possession of marijuana is guilty of a class B misdemeanor.
- e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.
- f. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.
- g. Probation under this subsection may include placement in another facility, treatment program, or drug court. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.
- h. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.
- i. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.

~~9-8.~~ Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation. ~~A court shall order a person who violates subdivision e of subsection 8 to undergo the drug addiction evaluation.~~

~~10-9.~~ If 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 seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.

**SECTION 3. AMENDMENT.** Section 19-03.1-23.4 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-23.4. Overdose prevention and immunity.**

An individual is immune from criminal prosecution under sections 19-03.1-22.1, 19-03.1-22.3, 19-03.1-22.5, subsection ~~87~~ of section 19-03.1-23, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that individual seeks medical assistance for another individual in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search.

<sup>66</sup> **SECTION 4. AMENDMENT.** Paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- (3) A conveyance is not subject to forfeiture for a violation of subsection ~~87~~ of section 19-03.1-23 or subsection 3 of section 19-03.2-03.

<sup>67</sup> **SECTION 5. AMENDMENT.** Subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection ~~65~~ of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

**SECTION 6. AMENDMENT.** Subsection 1 of section 19-03.1-45 of the North Dakota Century Code is amended and reenacted as follows:

1. If a person has pled guilty or has been found guilty of a felony violation of subsection ~~87~~ of section 19-03.1-23, if that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony

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<sup>66</sup> Section 19-03.1-36 was also amended by section 5 of House Bill No. 1183, chapter 187.

<sup>67</sup> Section 19-03.1-36 was also amended by section 4 of House Bill No. 1183, chapter 187.

offense of this or another state or the federal government, the court shall impose a period of probation up to the length authorized under section 12.1-32-06.1 with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.

**SECTION 7. AMENDMENT.** Subsection 2 of section 29-29.5-08 of the North Dakota Century Code is amended and reenacted as follows:

2. After consideration of an informant agreement, ~~notwithstanding section 19-03.1-23.2~~, a court may defer imposition of sentence or suspend a portion of a minimum mandatory sentence when a confidential informant has substantially complied with an informant agreement.

**SECTION 8. AMENDMENT.** Subsection 29 of section 40-05-02 of the North Dakota Century Code is amended and reenacted as follows:

29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing not more than one ounce [28.35 grams] of marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed is subject to subsection ~~109~~ of section 19-03.1-23.

**SECTION 9. REPEAL.** Section 19-03.1-23.2 of the North Dakota Century Code is repealed.

Approved March 6, 2019

Filed March 6, 2019



## CHAPTER 188

### HOUSE BILL NO. 1164

(Representatives Roers Jones, Beadle, Blum, Boschee, Heinert)  
(Senator Luick)

AN ACT to create and enact two new subsections to section 19-03.1-23 of the North Dakota Century Code, relating to drug court participation; to amend and reenact subsection 9 of section 12.1-32-02 and section 39-08-01.5 of the North Dakota Century Code, relating to drug court participation; and to provide a penalty.

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

<sup>68</sup> **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 a term of probation imposed as a part of the sentence. ~~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.~~

<sup>69</sup> **SECTION 2.** Two new subsections to section 19-03.1-23 of the North Dakota Century Code are created and enacted as follows:

Upon successful completion of a drug court program, a person who has been convicted of a felony under this section and sentenced to drug court is deemed to have been convicted of a misdemeanor.

If a person convicted of a misdemeanor under this section is sentenced to drug court and successfully completes a drug court program, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.

**SECTION 3. AMENDMENT.** Section 39-08-01.5 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-08-01.5. Partial suspension of sentence for drug court completion.**

1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a drug court program approved by the supreme court.

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<sup>68</sup> Section 12.1-32-02 was also amended by section 1 of House Bill No. 1185, chapter 118, and section 1 of House Bill No. 1252, chapter 117.

<sup>69</sup> Section 19-03.1-23 was also amended by section 3 of House Bill No. 1050, chapter 186, and section 2 of House Bill No. 1183, chapter 187.

2. Upon successful completion of a drug court program, a defendant convicted of a felony under section 39-08-01 and sentenced to drug court is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to drug court and successfully completes a drug court program, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.
4. For purposes of this section, 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.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 189

### HOUSE BILL NO. 1286

(Representatives Becker, Blum, Johnston, Paur, Pyle, Satrom, Simons, Strinden)  
(Senators Hogue, Kannianen, Luick, Unruh)

AN ACT to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, and legal interests in forfeited property.

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

**SECTION 1. AMENDMENT.** Section 19-03.1-36.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.**

1. Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is ~~a preponderance of the evidence~~ clear and convincing evidence.
2. Forfeiture proceedings are separate and distinct from any related criminal action, and may not be initiated until the owner of the property has been convicted of or pled guilty to a criminal offense, or the individual has died, fled the jurisdiction, been deported by the United States government, been granted immunity or a reduced sentence in exchange for testifying or assisting a law enforcement investigation or prosecution, has abandoned the property, or it can be established beyond a reasonable doubt the property was used in the commission of a crime or constituted the proceeds of criminal activity. As used in this subsection, "abandoned the property" or "fled the jurisdiction" means for a period of more than one year, the owner has not responded to any of the reasonable efforts made by the seizing agency to contact the owner or has not contacted the seizing agency.
3. Two or more law enforcement agencies and courts from different jurisdictions may coordinate, cooperate, and engage in interjurisdictional prosecution under this section.

**SECTION 2. AMENDMENT.** Section 19-03.1-36.6 of the North Dakota Century Code is amended and reenacted as follows:

##### **19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.**

1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish ~~probable cause~~ a valid seizure of the property to be forfeited, and for instituting the forfeiture action following which the property meets the requirements of subsection 2 of section 19-03.1-36.2. Following the state's case, any owner or person with a legal interest in the property to be forfeited

who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

2. A court ordering property forfeited under subsection 1 may order only the forfeited property or proceeds from the sale of forfeited property to be deposited with a political subdivision if the political subdivision has created a civil asset forfeiture fund. If the political subdivision does not have a civil asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited property must be deposited in the attorney general's asset forfeiture fund.
3. A political subdivision that has a civil asset forfeiture fund shall establish an application process, including eligibility criteria, to accept and process applications from law enforcement agencies within the political subdivision's jurisdiction for an appropriation from the civil asset forfeiture fund.
4. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property.

**SECTION 3. AMENDMENT.** Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-36.7. Legal interest in property.**

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.
2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.
  - a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.
  - b. Real property constituting a homestead may not be forfeited.
  - c. In determining whether a forfeiture is excessive, the court shall consider all factors, including the fair market value of the property, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and the possible penalty that could be imposed for the alleged or committed offense subject to forfeiture.

- d. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

**SECTION 4.** Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

**19-03.1-36.8. Reporting.**

1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture of property or to collaborate with a federal agency under federal law to conduct or engage in seizure and forfeiture of property. The term includes a multijurisdictional task force.
2. Every civil forfeiture judgment issued by a district court must be made publicly available and include the following information in the findings of fact:
  - a. Case number of the forfeiture proceeding and the district court where the case was filed.
  - b. Who filed a claim or counterclaim for the seized property, if any.
  - c. Date the forfeiture order was issued.
  - d. Whether a forfeiture settlement agreement was reached.
  - e. The date and the final disposition of the property.
  - f. Estimated value of the forfeited property.
  - g. Estimate of the total costs accrued by the law enforcement agency for storage and disposal of the civilly forfeited property.
  - h. Amount of any attorney fees awarded to owners of seized and forfeited property.
3. Annually, a prosecutor who litigates the criminal case and forfeiture proceeding shall provide to the attorney general a copy of the judgment that includes the information required under subsection 2 and the total value of the forfeited property held by the agency at the end of the reporting period.
4. By November first of each year, the attorney general shall submit to the legislative management and the governor a written report summarizing activity in the state for the preceding fiscal year, the type, approximate value, and disposition of any civilly forfeited property, and the amount of proceeds received.
  - a. Summary data and civilly forfeited property must be disaggregated by agency.
  - b. The attorney general shall make the report available on the attorney general's website.

5. The attorney general may recover any costs under this section by withdrawing money from the asset forfeiture fund.
6. A law enforcement agency may use forfeiture proceeds to pay the costs of compiling and reporting data under this section.
7. The data and reports compiled under this section are public information and not exempt from disclosure.
8. The attorney general may require the reporting of additional information not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for annual submission of forfeiture data by law enforcement agencies.
9. If a law enforcement agency fails to file a report within thirty days after the report is due, the attorney general may compel compliance by any means until the report is filed.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 190

### HOUSE BILL NO. 1417

(Representatives Vetter, Beadle, Becker, M. Johnson, Jones, Kading, McWilliams,  
Meier, O'Brien, Skroch)  
(Senator Oban)

AN ACT to amend and reenact subsections 2, 38, and 40 of section 19-24.1-01, subsection 2 of section 19-24.1-03, subdivision a of subsection 5 of section 19-24.1-05, subsection 7 of section 19-24.1-10, section 19-24.1-11, subsection 4 of section 19-24.1-21, and subsection 10 of section 19-24.1-32 of the North Dakota Century Code, relating to access to medical marijuana; and to declare an emergency.

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

<sup>70</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Allowable amount of usable marijuana" means the amount of usable marijuana a registered qualifying patient or registered designated caregiver may purchase in a thirty-day period under this chapter.

a. Except as provided under subdivision b:

(1) During a thirty-day period, a registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than two and one-half ounces [70.87 grams] of dried leaves or flowers of the plant of genus cannabis in a combustible delivery form.

(2) At any time a registered qualifying patient, or a registered designated caregiver on behalf of a registered qualifying patient, may not possess more than three ounces [85.05 grams] of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form.

b. Notwithstanding subdivision a, if a registered qualifying patient has a registry identification card authorizing an enhanced allowable amount:

(1) During a thirty-day period a registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than six ounces [170.01 grams] of dried leaves or flowers of the plant of genus cannabis in a combustible delivery form.

(2) At any time a registered qualifying patient, or a registered designated caregiver on behalf of a registered qualifying patient, may not possess more than seven and one-half ounces [212.62 grams] of dried leaves

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<sup>70</sup> Section 19-24.1-01 was also amended by section 1 of House Bill No. 1119, chapter 191, section 2 of House Bill No. 1119, chapter 191, section 1 of House Bill No. 1283, chapter 193, section 3 of House Bill No. 1349, chapter 61, section 2 of House Bill No. 1417, chapter 190, section 3 of House Bill No. 1417, chapter 190, and section 1 of House Bill No. 1519, chapter 192.

or flowers of the plant of the genus cannabis in a combustible delivery form.

- c. A registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than the maximum concentration or amount of tetrahydrocannabinol permitted in a thirty-day period. The maximum concentration or amount of tetrahydrocannabinol permitted in a thirty-day period for a cannabinoid concentrate or medical cannabinoid product, or the cumulative total of both, is ~~two~~four thousand milligrams.

<sup>71</sup> **SECTION 2. AMENDMENT.** Subsection 38 of section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

38. "Usable marijuana" means a medical marijuana product or the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form. However, the term does not include ~~the dried leaves or flowers unless authorized through a written certification and does not include a cannabinoid edible product.~~ In the case of a registered qualifying patient who is a minor, "usable marijuana" is limited to pediatric medical marijuana.

<sup>72</sup> **SECTION 3. AMENDMENT.** Subsection 40 of section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

40. "Written certification" means a form established by the department which is executed, dated, and signed by a health care provider within ninety calendar days of the date of application, stating ~~that in the health care provider's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's~~the patient has a debilitating medical condition. A health care provider may authorize the use an enhanced amount of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form to treat or alleviate the patient's debilitating medical condition of cancer. A written certification may not be made except in the course of a bona fide provider-patient relationship.

<sup>73</sup> **SECTION 4. AMENDMENT.** Subsection 2 of section 19-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A qualifying patient application for a registry identification card is complete and eligible for review if an applicant submits to the department:

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<sup>71</sup> Section 19-24.1-01 was also amended by section 1 of House Bill No. 1119, chapter 191, section 2 of House Bill No. 1119, chapter 191, section 1 of House Bill No. 1283, chapter 193, section 3 of House Bill No. 1349, chapter 61, section 1 of House Bill No. 1417, chapter 190, section 3 of House Bill No. 1417, chapter 190, and section 1 of House Bill No. 1519, chapter 192.

<sup>72</sup> Section 19-24.1-01 was also amended by section 1 of House Bill No. 1119, chapter 191, section 2 of House Bill No. 1119, chapter 191, section 1 of House Bill No. 1283, chapter 193, section 3 of House Bill No. 1349, chapter 61, section 1 of House Bill No. 1417, chapter 190, section 2 of House Bill No. 1417, chapter 190, and section 1 of House Bill No. 1519, chapter 192.

<sup>73</sup> Section 19-24.1-03 was also amended by section 3 of House Bill No. 1119, chapter 191, and section 2 of House Bill No. 1283, chapter 193.



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- a. A nonrefundable annual application fee in the amount of fifty dollars, with a personal check or cashier's check payable to "North Dakota State Department of Health, Medical Marijuana Program".
  - b. An original written certification, which must include:
    - (1) The name, address, and telephone number of the practice location of the applicant's health care provider;
    - (2) The health care provider's North Dakota license number;
    - (3) The health care provider's medical or nursing specialty;
    - (4) The applicant's name and date of birth;
    - (5) The applicant's debilitating medical condition and the medical justification for the health care provider's certification of the patient's debilitating medical condition;
    - (6) ~~Attestation the written certification is made in the course of a bona fide provider-patient relationship and that in the provider's professional opinion the applicant is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the applicant's debilitating medical condition;~~
    - (7) Whether the health care provider authorizes the patient to use an enhanced amount of the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form to treat or alleviate the patient's debilitating medical condition of cancer; and
    - (8) The health care provider's signature and the date.
  - c. An original qualifying patient application for a registry identification card form established by the department which must include all of the following:
    - (1) The applicant's name, address, and date of birth.
    - (2) The applicant's social security number.
    - (3) The name, address, and date of birth of the applicant's proposed designated caregiver, if any.
    - (4) A photographic copy of the applicant's North Dakota identification. The North Dakota identification must be available for inspection and verification upon request of the department. If the applicant is a minor, a certificated copy of a birth record is required.
    - (5) The applicant's or guardian's signature and the date, or in the case of a minor, the signature of the minor's parent or legal guardian with responsibility for health care decisions and the date.
  - d. A signed consent for release of medical information related to the applicant's debilitating medical condition, on a form provided by the department.

- e. A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the applicant.
- f. Any other information or material required by rule adopted under this chapter.

<sup>74</sup> **SECTION 5. AMENDMENT.** Subdivision a of subsection 5 of section 19-24.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- a. The department receives documentation the minor's health care provider has explained to the parent or legal guardian with responsibility for health care decisions for the minor the potential risks and benefits of the use of pediatric medical marijuana ~~to treat or alleviate the debilitating medical condition;~~ and

<sup>75</sup> **SECTION 6. AMENDMENT.** Subsection 7 of section 19-24.1-10 of the North Dakota Century Code is amended and reenacted as follows:

7. A registered qualifying patient's certifying health care provider ~~shall~~may notify the department in writing if the health care provider's registered qualifying patient no longer has a debilitating medical condition ~~or if the health care provider no longer believes the patient will receive therapeutic or palliative benefit from the medical use of marijuana~~may notify the department if a bona fide provider-patient relationship ceases to exist. The qualifying patient's registry identification card becomes void immediately upon the health care provider's notification of the department and the registered qualifying patient shall dispose of any usable marijuana in the cardholder's possession within fifteen calendar days, in accordance with rules adopted under this chapter.

<sup>76</sup> **SECTION 7. AMENDMENT.** Section 19-24.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**19-24.1-11. Registry identification cards.**

1. The contents of a registry identification card must include:
  - a. The name of the cardholder;
  - b. A designation as to whether the cardholder is a qualifying patient, designated caregiver, or compassion center agent;
  - c. A designation as to whether a qualifying patient is a minor;
  - d. A designation as to whether a qualifying patient or a designated caregiver's qualifying patient is authorized to use thean enhanced amount of dried leaves or flowers of the plant of the genus cannabis to treat or alleviate the patient's debilitating medical condition of cancer;

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<sup>74</sup> Section 19-24.1-05 was also amended by section 5 of House Bill No. 1283, chapter 193.

<sup>75</sup> Section 19-24.1-10 was also amended by section 6 of House Bill No. 1283, chapter 193.

<sup>76</sup> Section 19-24.1-11 was also amended by section 7 of House Bill No. 1283, chapter 193.

- e. The date of issuance and expiration date;
  - f. A random ten-digit alphanumeric identification number containing at least four numbers and at least four letters which is unique to the cardholder;
  - g. If the cardholder is a designated caregiver, the random identification number of the qualifying patient the designated caregiver is authorized to assist;
  - h. A photograph of the cardholder; and
  - i. The phone number or website address at which the card can be verified.
2. Except as otherwise provided in this section or rule adopted under this chapter, a registry identification card expiration date must be one year after the date of issuance.
  3. If a health care provider ~~states in the written limits certification that the qualifying patient would benefit from the medical use of marijuana until a specified date, less than one year, the registry identification card expires on that date.~~

**SECTION 8. AMENDMENT.** Subsection 4 of section 19-24.1-21 of the North Dakota Century Code is amended and reenacted as follows:

4. A dispensary or agent of the dispensary may not dispense usable marijuana unless the dispensary first uses the verification system to confirm the registered qualifying patient or registered designated caregiver identification card is valid. A dispensary or agent of the dispensary:
  - a. May not dispense usable marijuana to a person other than a registered qualifying patient or a registered qualifying patient's registered designated caregiver. If a registered qualifying patient is a minor:
    - (1) The dispensary or agent of the dispensary may not dispense usable marijuana to a minor; and
    - (2) The usable marijuana dispensed to the minor's designated caregiver must be in the form of pediatric medical marijuana.
  - b. May not dispense to a registered qualifying patient or registered designated caregiver more than the allowable amount of usable marijuana and may not dispense an amount if it is known that amount would cause the recipient to purchase or possess more usable marijuana than is permitted under this chapter.
  - c. ~~May not dispense to a registered qualifying patient or registered designated caregiver the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form unless the registry identification card and verification system authorize this form of usable marijuana.~~

<sup>77</sup> **SECTION 9. AMENDMENT.** Subsection 10 of section 19-24.1-32 of the North Dakota Century Code is amended and reenacted as follows:

<sup>77</sup> Section 19-24.1-32 was also amended by section 7 of House Bill No. 1119, chapter 191, and section 8 of House Bill No. 1283, chapter 193.

10. A health care provider is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity, solely for providing a written certification or for otherwise stating in the health care provider's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of usable marijuana to treat or alleviate the patient's debilitating medical condition or for refusing to provide written certification or a statement. This chapter does not release a health care provider from the duty to exercise a professional standard of care for evaluating or treating a patient's medical condition.

**SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 191

### HOUSE BILL NO. 1119

(Representatives Westlind, B. Anderson, P. Anderson, Devlin, Dobervich, M. Ruby)

AN ACT to amend and reenact subsection 8 of section 19-24.1-01, paragraph 1 of subdivision a of subsection 24 of section 19-24.1-01, section 19-24.1-03, subsection 2 of section 19-24.1-04, subsection 1 of section 19-24.1-15, subsection 2 of section 19-24.1-18, subsection 13 of section 19-24.1-32, and section 19-24.1-37 of the North Dakota Century Code, relating to the medical marijuana program; to provide for the destroying or redacting of social security numbers in the department's possession; and to declare an emergency.

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

<sup>78</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Cannabinoid ~~tincture~~resolution" means a solution ~~of alcohol, consisting of a mixture created from~~ cannabinoid concentrate, and other ingredients ~~intended for consumption~~.

<sup>79</sup> **SECTION 2. AMENDMENT.** Paragraph 1 of subdivision a of subsection 24 of section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Cannabinoid ~~tincture~~resolution;

<sup>80</sup> **SECTION 3. AMENDMENT.** Section 19-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **19-24.1-03. Qualifying patients - Registration.**

1. A qualifying patient is not eligible to purchase, use, or possess usable marijuana under the medical marijuana program unless the qualifying patient has a valid registry identification card.

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<sup>78</sup> Section 19-24.1-01 was also amended by section 2 of House Bill No. 1119, chapter 191, section 1 of House Bill No. 1283, chapter 193, section 3 of House Bill No. 1349, chapter 61, section 1 of House Bill No. 1417, chapter 190, section 2 of House Bill No. 1417, chapter 190, section 3 of House Bill No. 1417, chapter 190, and section 1 of House Bill No. 1519, chapter 192.

<sup>79</sup> Section 19-24.1-01 was also amended by section 1 of House Bill No. 1119, chapter 191, section 1 of House Bill No. 1283, chapter 193, section 3 of House Bill No. 1349, chapter 61, section 1 of House Bill No. 1417, chapter 190, section 2 of House Bill No. 1417, chapter 190, section 3 of House Bill No. 1417, chapter 190, and section 1 of House Bill No. 1519, chapter 192.

<sup>80</sup> Section 19-24.1-03 was also amended by section 2 of House Bill No. 1283, chapter 193, and section 4 of House Bill No. 1417, chapter 190.

2. A qualifying patient application for a registry identification card is complete and eligible for review if an applicant submits to the department:
  - a. A nonrefundable annual application fee in the amount of fifty dollars, ~~with a personal check or cashier's check payable to "North Dakota State Department of Health, Medical Marijuana Program".~~
  - b. An original written certification, which must include:
    - (1) The name, address, and telephone number of the practice location of the applicant's health care provider;
    - (2) The health care provider's North Dakota license number;
    - (3) The health care provider's medical or nursing specialty;
    - (4) The applicant's name and date of birth;
    - (5) The applicant's debilitating medical condition and the medical justification for the health care provider's certification of the patient's debilitating medical condition;
    - (6) Attestation the written certification is made in the course of a bona fide provider-patient relationship and that in the provider's professional opinion the applicant is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the applicant's debilitating medical condition;
    - (7) Whether the health care provider authorizes the patient to use the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form; and
    - (8) The health care provider's signature and the date.
  - c. An original qualifying patient application for a registry identification card form established by the department which must include all of the following:
    - (1) The applicant's name, address, and date of birth.
    - (2) ~~The applicant's social security number.~~
    - (3) The name, address, and date of birth of the applicant's proposed designated caregiver, if any.
    - (4)(3) A photographic copy of the applicant's North Dakota identification. The North Dakota identification must be available for inspection and verification upon request of the department. If the applicant is a minor, ~~a certified~~ a certified copy of a birth record or a photographic copy of the minor's North Dakota identification is required.
    - (5)(4) The applicant's or guardian's signature and the date, or in the case of a minor, the signature of the minor's parent or legal guardian with responsibility for health care decisions and the date.

- d. A signed consent for release of medical information related to the applicant's debilitating medical condition, on a form provided by the department.
  - e. A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the applicant.
  - f. Any other information or material required by rule adopted under this chapter.
3. If the applicant is unable to submit the required application information due to age or medical condition, the individual responsible for making medical decisions for the applicant may submit the application on behalf of the applicant. The individual responsible for making medical decisions:
    - a. Must be identified on the qualifying patient application for a registry identification card; and
    - b. Shall provide a ~~copy of the individual's North Dakota~~ photographic copy of the individual's department-approved identification. The ~~North Dakota~~ identification must be available for inspection and verification upon the request of the department.
  4. If the applicant is a minor, the department may waive the application or renewal fee if:
    - a. The parent or legal guardian of the applicant is the applicant's registered designated caregiver; and
    - b. The applicant resides with the applicant's registered designated caregiver.

<sup>81</sup> **SECTION 4. AMENDMENT.** Subsection 2 of section 19-24.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. A designated caregiver application is complete and eligible for review if an applicant submits to the department all of the following:
  - a. A nonrefundable annual application fee in the amount of fifty dollars, ~~with a personal check or cashier's check made payable to "North Dakota State Department of Health, Medical Marijuana Program"~~.
  - b. An original designated caregiver application for a registry identification card form established by the department which must include all of the following:
    - (1) ~~A certified copy of a birth record verifying the applicant is at least twenty-one years of age.~~
    - (2) A photographic copy of the applicant's North Dakota identification. The North Dakota identification must be available for inspection and verification upon request of the department.

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<sup>81</sup> Section 19-24.1-04 was also amended by section 4 of House Bill No. 1283, chapter 193.

- ~~(3)(2)~~ The name, address, telephone number, and date of birth of the qualifying patient.
  - ~~(4)~~ The name, address, and telephone number for the qualifying patient's health care provider.
  - ~~(5)(3)~~ The name, address, and telephone number of the applicant.
  - ~~(6)~~ The applicant's social security number.
  - ~~(7)(4)~~ The applicant's signature and the date.
- c. An original designated caregiver authorization form established by the department which must be executed by a registered qualifying patient providing the designated caregiver applicant with the responsibility of managing the well-being of the registered qualifying patient with respect to the registered qualifying patient's medical use of marijuana. The form must include:
- (1) The name and date of birth of the designated caregiver applicant; and
  - (2) The registered qualifying patient's signature and the date.
- d. A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the applicant.
- e. Any other information or material required by the department by rule.

**SECTION 5. AMENDMENT.** Subsection 1 of section 19-24.1-15 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon receipt of notification by the department a compassion center application is eligible for registration, the applicant shall submit all of the following additional items to the department to qualify for registration:
  - a. A certification fee, made payable to the "North Dakota State Department of Health, Medical Marijuana Program", in the amount of ninety thousand dollars for a dispensary and one hundred ten thousand dollars for a manufacturing facility.
  - b. A financial assurance or security bond to ensure the protection of the public health and safety and the environment in the event of abandonment, default, or other inability or unwillingness to meet the requirements of this chapter.
  - ~~c. The legal name, articles of incorporation or articles of organization, and bylaws or operating agreement, of the proposed compassion center applicant.~~
  - d. The physical address of the proposed compassion center; confirmation the information in the application regarding the physical location of the proposed compassion center has not changed, and if the information has changed the department shall determine whether the new information meets the requirements of this chapter; and a current certificate of occupancy, or equivalent document, to demonstrate compliance with the provisions of state and local fire code for the physical address of the



proposed compassion center. It is not necessary for an applicant to resubmit any information provided in the initial application unless there has been a change in that information.

- e.d. An update to previously submitted information, including information about compassion center agents and compliance with section 19-24.1-18.

**SECTION 6. AMENDMENT.** Subsection 2 of section 19-24.1-18 of the North Dakota Century Code is amended and reenacted as follows:

2. To qualify to be issued a registry identification card, each compassion center agent must be at least twenty-one years of age and shall submit all of the following registry identification card application material to the department:
  - a. A photographic copy of the agent's department-approved identification. The agent shall make the identification available for inspection and verification by the department.
  - b. A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the agent.
  - c. A written and signed statement from an officer or executive staff member of the compassion center stating the applicant is associated with the compassion center and the capacity of the association.
  - d. The name, address, and telephone number of the agent.
  - e. ~~The agent's social security number.~~
  - f. The name, address, and telephone number of the compassion center with which the agent is associated.
  - g.f. The agent's signature and the date.
  - h.g. A nonrefundable application or renewal fee in the amount of two hundred dollars, ~~in the form of a check made out to "North Dakota State Department of Health, Medical Marijuana Program".~~

<sup>82</sup> **SECTION 7. AMENDMENT.** Subsection 13 of section 19-24.1-32 of the North Dakota Century Code is amended and reenacted as follows:

13. A person in possession of marijuana, usable marijuana, or medical marijuana waste in the course of performing laboratory tests as provided under this chapter and rules adopted under this chapter may not be subject to arrest or prosecution for that possession or testing.

**SECTION 8. AMENDMENT.** Section 19-24.1-37 of the North Dakota Century Code is amended and reenacted as follows:

**19-24.1-37. Confidentiality.**

1. ~~Data~~Except as provided under subsection 2, information kept or maintained by the department is confidential, including information in a registration

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<sup>82</sup> Section 19-24.1-32 was also amended by section 8 of House Bill No. 1283, chapter 193, and section 9 of House Bill No. 1417, chapter 190.

application or renewal and supporting ~~data~~information submitted by a qualifying patient, designated caregiver, compassion center, proposed compassion center, or compassion center agent, including ~~data~~information on designated caregivers and health care providers, ~~is confidential~~.

2. ~~Data~~Information kept or maintained by the department may be disclosed as necessary for:
  - a. The verification of registration certificates and registry identification cards under this chapter;
  - b. Submission of the annual report required by this chapter;
  - c. Submission to the North Dakota prescription drug monitoring program;
  - d. Notification of state or local law enforcement of apparent criminal violation of this chapter;
  - e. Notification of state and local law enforcement about falsified or fraudulent information submitted for purposes of obtaining or renewing a registry identification card; or
  - f. Notification of the North Dakota board of medicine or North Dakota board of nursing if there is a reason to believe a health care provider provided a written certification and the department has reason to believe the health care provider otherwise violated this chapter.
3. Upon a cardholder's written request, the department may confirm the cardholder's status as a registered qualifying patient or a registered designated caregiver to a third party, such as a landlord, school, medical professional, or court.
4. ~~Data~~Information submitted to a local government to demonstrate compliance with any security requirements required by local zoning ordinances or regulations is confidential.

**SECTION 9. SOCIAL SECURITY NUMBERS.** For any social security numbers obtained by the State Department of Health as part of an application under chapter 19-24.1, the department shall destroy the documents containing social security numbers or redact the social security numbers from the documents.

**SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 192

### HOUSE BILL NO. 1519

(Representatives B. Koppelman, Beadle, Ertelt, Marschall, Mock, Steiner, Vetter)

AN ACT to amend and reenact subsection 15 of section 19-24.1-01 of the North Dakota Century Code, relating to debilitating medical conditions under the medical marijuana program; to provide for a legislative management study; and to declare an emergency.

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

<sup>83</sup> **SECTION 1. AMENDMENT.** Subsection 15 of section 19-24.1-01 of the North Dakota Century Code are amended and reenacted as follows:

15. "Debilitating medical condition" means one of the following:
  - a. Cancer;
  - b. Positive status for human immunodeficiency virus;
  - c. Acquired immune deficiency syndrome;
  - d. Decompensated cirrhosis caused by hepatitis C;
  - e. Amyotrophic lateral sclerosis;
  - f. Posttraumatic stress disorder;
  - g. Agitation of Alzheimer's disease or related dementia;
  - h. Crohn's disease;
  - i. Fibromyalgia;
  - j. Spinal stenosis or chronic back pain, including neuropathy or damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity;
  - k. Glaucoma;
  - l. Epilepsy;
  - m. Anorexia nervosa;
  - n. Bulimia nervosa;

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<sup>83</sup> Section 19-24.1-01 was also amended by section 1 of House Bill No. 1119, chapter 191, section 2 of House Bill No. 1119, chapter 191, section 1 of House Bill No. 1283, chapter 193, section 3 of House Bill No. 1349, chapter 61, section 1 of House Bill No. 1417, chapter 190, section 2 of House Bill No. 1417, chapter 190, and section 3 of House Bill No. 1417, chapter 190.

- o. Anxiety disorder;
- p. Tourette syndrome;
- q. Ehlers-Danlos syndrome;
- r. Endometriosis;
- s. Interstitial cystitis;
- t. Neuropathy;
- u. Migraine;
- v. Rheumatoid arthritis;
- w. Autism spectrum disorder;
- x. A brain injury;
- y. A terminal illness; and
- n-z. A chronic or debilitating disease or medical condition or treatment for such disease or medical condition that produces one or more of the following:
  - (1) Cachexia or wasting syndrome;
  - (2) Severe debilitating pain that has not responded to previously prescribed medication or surgical measures for more than three months or for which other treatment options produced serious side effects;
  - (3) Intractable nausea;
  - (4) Seizures; or
  - (5) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - MEDICAL MARIJUANA DEBILITATING MEDICAL CONDITIONS.** During the 2019-20 interim, the legislative management shall consider studying the list of debilitating medical conditions under the medical marijuana program to determine the appropriateness of the list, including whether conditions should be added to or removed from the list. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

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

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 193

### HOUSE BILL NO. 1283

(Representatives Skroch, Becker, Ertelt, Fegley, Johnston, Jones, Roers Jones, M. Ruby, Vetter)  
(Senator O. Larsen)

AN ACT to create and enact section 19-24.1-03.1 and a new paragraph to subdivision b of subsection 2 of section 19-24.1-04 of the North Dakota Century Code, relating to access to medical marijuana; to amend and reenact section 19-24.1-01, subsection 2 of section 19-24.1-03, subdivision a of subsection 5 of section 19-24.1-05, subsection 7 of section 19-24.1-10, subsection 3 of section 19-24.1-11, and subsection 10 of section 19-24.1-32 of the North Dakota Century Code, relating to access to medical marijuana; and to declare an emergency.

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

<sup>84</sup> **SECTION 1. AMENDMENT.** Section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **19-24.1-01. Definitions.**

As used in this chapter, unless the context indicates otherwise:

1. "Advanced practice registered nurse" means an advanced practice registered nurse defined under section 43-12.1-02.
2. "Allowable amount of usable marijuana" means the amount of usable marijuana a registered qualifying patient or registered designated caregiver may purchase in a thirty-day period under this chapter.
  - a. During a thirty-day period, a registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than two and one-half ounces [70.87 grams] of dried leaves or flowers of the plant of genus cannabis in a combustible delivery form. At any time a registered qualifying patient, or a registered designated caregiver on behalf of a registered qualifying patient, may not possess more than three ounces [85.05 grams] of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form.
  - b. A registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than the maximum concentration or amount of tetrahydrocannabinol permitted in a thirty-day period. The maximum concentration or amount of tetrahydrocannabinol permitted in a thirty-day period for a cannabinoid concentrate or medical cannabinoid product, or the cumulative total of both, is two thousand milligrams.

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<sup>84</sup> Section 19-24.1-01 was also amended by section 1 of House Bill No. 1119, chapter 191, section 2 of House Bill No. 1119, chapter 191, section 3 of House Bill No. 1349, chapter 61, section 1 of House Bill No. 1417, chapter 190, section 2 of House Bill No. 1417, chapter 190, section 3 of House Bill No. 1417, chapter 190, and section 1 of House Bill No. 1519, chapter 192.

3. "Bona fide provider-patient relationship" means a treatment or counseling relationship between a health care provider and patient in which all the following are present:
  - a. The health care provider has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.
  - b. The health care provider has created and maintained records of the patient's condition in accordance with medically accepted standards.
  - c. The patient is under the health care provider's continued care for the debilitating medical condition that qualifies the patient for the medical use of marijuana.
  - d. The health care provider has a reasonable expectation that provider will continue to provide followup care to the patient to monitor the medical use of marijuana as a treatment of the patient's debilitating medical condition.
  - e. The relationship is not for the sole purpose of providing written certification for the medical use of marijuana.
4. "Cannabinoid" means a chemical compound that is one of the active constituents of marijuana.
5. "Cannabinoid capsule" means a small, soluble container, usually made of gelatin, which encloses a dose of a cannabinoid product or a cannabinoid concentrate intended for consumption. The maximum concentration of amount of tetrahydrocannabinol permitted in a serving of a cannabinoid capsule is fifty milligrams.
6. "Cannabinoid concentrate" means a concentrate or extract obtained by separating cannabinoids from marijuana by a mechanical, chemical, or other process.
7. "Cannabinoid edible product" means a food or potable liquid into which a cannabinoid concentrate or the dried leaves or flowers of the plant of the genus cannabis is incorporated.
8. "Cannabinoid tincture" means a solution of alcohol, cannabinoid concentrate, and other ingredients intended for consumption.
9. "Cannabinoid topical" means a cannabinoid product intended to be applied to the skin or hair. The maximum concentration or amount of tetrahydrocannabinol permitted in a cannabinoid topical is six percent.
10. "Cannabinoid transdermal patch" means an adhesive substance applied to the skin which contains a cannabinoid product or cannabinoid concentrate for absorption into the bloodstream. The maximum concentration or amount of tetrahydrocannabinol permitted in a serving of a cannabinoid transdermal patch is fifty milligrams.

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11. "Cardholder" means a qualifying patient, designated caregiver, or compassion center agent who has been issued and possesses a valid registry identification card.
  12. "Compassion center" means a manufacturing facility or dispensary.
  13. "Compassion center agent" means a principal officer, board member, member, manager, governor, employee, volunteer, or agent of a compassion center.
  14. "Contaminated" means made impure or inferior by extraneous substances.
  15. "Debilitating medical condition" means one of the following:
    - a. Cancer;
    - b. Positive status for human immunodeficiency virus;
    - c. Acquired immune deficiency syndrome;
    - d. Decompensated cirrhosis caused by hepatitis C;
    - e. Amyotrophic lateral sclerosis;
    - f. Posttraumatic stress disorder;
    - g. Agitation of Alzheimer's disease or related dementia;
    - h. Crohn's disease;
    - i. Fibromyalgia;
    - j. Spinal stenosis or chronic back pain, including neuropathy or damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity;
    - k. Glaucoma;
    - l. Epilepsy;
    - m. A terminal illness; and
    - n. A chronic or debilitating disease or medical condition or treatment for such disease or medical condition that produces one or more of the following:
      - (1) Cachexia or wasting syndrome;
      - (2) Severe debilitating pain that has not responded to previously prescribed medication or surgical measures for more than three months or for which other treatment options produced serious side effects;
      - (3) Intractable nausea;
      - (4) Seizures; or

- (5) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis.
16. "Department" means the state department of health.
  17. "Designated caregiver" means an individual who agrees to manage the well-being of a registered qualifying patient with respect to the qualifying patient's medical use of marijuana.
  18. "Dispensary" means an entity registered by the department as a compassion center authorized to dispense usable marijuana to a registered qualifying patient and a registered designated caregiver.
  19. "Enclosed, locked facility" means a closet, room, greenhouse, building, or other enclosed area equipped with locks or other security devices that permit access limited to individuals authorized under this chapter or rules adopted under this chapter.
  20. "Health care provider" means a physician, a physician assistant, or an advanced practice registered nurse.
  21. "Manufacturing facility" means an entity registered by the department as a compassion center authorized to produce and process and to sell usable marijuana to a dispensary.
  22. "Marijuana" means all parts of the plant of the genus cannabis; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant.
  23. "Maximum concentration or amount of tetrahydrocannabinol" means the total amount of tetrahydrocannabinol and tetrahydrocannabinolic acid in a medical cannabinoid product or a cannabinoid concentrate.
  24. "Medical cannabinoid product" means a product intended for human consumption or use which contains cannabinoids.
    - a. Medical cannabinoid products are limited to the following forms:
      - (1) Cannabinoid tincture;
      - (2) Cannabinoid capsule;
      - (3) Cannabinoid transdermal patch; and
      - (4) Cannabinoid topical.
    - b. "Medical cannabinoid product" does not include:
      - (1) A cannabinoid edible product;
      - (2) A cannabinoid concentrate by itself; or
      - (3) The dried leaves or flowers of the plant of the genus cannabis by itself.



25. "Medical marijuana product" means a cannabinoid concentrate or a medical cannabinoid product.
26. "Medical marijuana waste" means unused, surplus, returned, or out-of-date usable marijuana; recalled usable marijuana; unused marijuana; or plant debris of the plant of the genus cannabis, including dead plants and all unused plant parts and roots.
27. "Medical use of marijuana" means the acquisition, use, and possession of usable marijuana to treat or alleviate a qualifying patient's debilitating medical condition.
28. "Minor" means an individual under the age of nineteen.
29. "North Dakota identification" means a North Dakota driver's license or comparable state of North Dakota or federal issued photo identification card verifying North Dakota residence.
30. "Pediatric medical marijuana" means a medical marijuana product containing cannabidiol which may not contain a maximum concentration or amount of tetrahydrocannabinol of more than six percent.
31. "Physician" means a physician licensed under chapter 43-17 to practice medicine in the state of North Dakota.
32. "Physician assistant" means an individual licensed under chapter 43-17 to practice as a physician assistant in the state.
33. "Posttraumatic stress disorder" means a patient meets the diagnostic criteria for posttraumatic stress disorder under the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fifth edition, text revision (2013).
- ~~33-34.~~ "Processing" or "process" means the compounding or conversion of marijuana into a medical marijuana product.
- ~~34-35.~~ "Producing", "produce", or "production" mean the planting, cultivating, growing, trimming, or harvesting of the plant of the genus cannabis or the drying of the leaves or flowers of the plant of the genus cannabis.
- ~~35-36.~~ "Qualifying patient" means an individual who has been diagnosed by a health care provider as having a debilitating medical condition.
- ~~36-37.~~ "Registry identification card" means a document issued by the department which identifies an individual as a registered qualifying patient, registered designated caregiver, or registered compassion center agent.
- ~~37-38.~~ "Terminal illness" means a disease, illness, or condition of a patient:
  - a. For which there is not a reasonable medical expectation of recovery;
  - b. Which as a medical probability, will result in the death of the patient, regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes; and

- c. As a result of which, the patient's health care provider would not be surprised if death were to occur within six months.

~~38-39.~~ "Usable marijuana" means a medical marijuana product or the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form. However, the term does not include the dried leaves or flowers unless authorized through a written certification and does not include a cannabinoid edible product. In the case of a registered qualifying patient who is a minor, "usable marijuana" is limited to pediatric medical marijuana.

~~39-40.~~ "Verification system" means the system maintained by the department under section 19-24.1-31 for verification of registry identification cards.

~~40-41.~~ "Written certification" means a form established by the department which is executed, dated, and signed by a health care provider within ninety calendar days of the date of application, stating that ~~in the health care provider's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's~~ the patient has a debilitating medical condition. A health care provider may authorize the use of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form to treat or alleviate the patient's debilitating medical condition. A written certification may not be made except in the course of a bona fide provider-patient relationship.

<sup>85</sup> **SECTION 2. AMENDMENT.** Subsection 2 of section 19-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A qualifying patient application for a registry identification card is complete and eligible for review if an applicant submits to the department:
  - a. A nonrefundable annual application fee in the amount of fifty dollars, with a personal check or cashier's check payable to "North Dakota State Department of Health, Medical Marijuana Program".
  - b. An original written certification, which must include:
    - (1) The name, address, and telephone number of the practice location of the applicant's health care provider;
    - (2) The health care provider's North Dakota license number;
    - (3) The health care provider's medical or nursing specialty;
    - (4) The applicant's name and date of birth;
    - (5) The applicant's debilitating medical condition and the medical justification for the health care provider's certification of the patient's debilitating medical condition;
    - (6) Attestation the written certification is made in the course of a bona fide provider-patient relationship ~~and that in the provider's professional opinion the applicant is likely to receive therapeutic or palliative benefit~~

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<sup>85</sup> Section 19-24.1-03 was also amended by section 3 of House Bill No. 1119, chapter 191, and section 4 of House Bill No. 1417, chapter 190.

~~from the medical use of marijuana to treat or alleviate the applicant's debilitating medical condition;~~

- (7) Whether the health care provider authorizes the patient to use the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form; and
  - (8) The health care provider's signature and the date.
- c. An original qualifying patient application for a registry identification card form established by the department which must include all of the following:
- (1) The applicant's name, address, and date of birth.
  - (2) The applicant's social security number.
  - (3) The name, address, and date of birth of the applicant's proposed designated caregiver, if any.
  - (4) A photographic copy of the applicant's North Dakota identification. The North Dakota identification must be available for inspection and verification upon request of the department. If the applicant is a minor, a certificated copy of a birth record is required.
  - (5) The applicant's or guardian's signature and the date, or in the case of a minor, the signature of the minor's parent or legal guardian with responsibility for health care decisions and the date.
  - (6) A disclosure that possession of a firearm by a person who possesses marijuana may be a violation of federal law.
- d. A signed consent for release of medical information related to the applicant's debilitating medical condition, on a form provided by the department.
- e. A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the applicant.
- f. Any other information or material required by rule adopted under this chapter.

**SECTION 3.** Section 19-24.1-03.1 of the North Dakota Century Code is created and enacted as follows:

**19-24.1-03.1. Qualifying patients - Veterans.**

In lieu of the written certification required under section 19-24.1-03, a veteran receiving treatment from a federal veterans' affairs entity may submit to the department a copy of the veterans' affairs medical records identifying a diagnosis of a debilitating medical condition and a copy of military discharge documents. The department may use the medical records and discharge documents in place of a written certification to approve or deny the application under section 19-24.1-05. The department shall issue a registry identification card within thirty calendar days of approving an application under this section.

<sup>86</sup> **SECTION 4.** A new paragraph to subdivision b of subsection 2 of section 19-24.1-04 of the North Dakota Century Code is created and enacted as follows:

A disclosure that possession of a firearm by a person who possesses marijuana may be a violation of federal law.

<sup>87</sup> **SECTION 5. AMENDMENT.** Subdivision a of subsection 5 of section 19-24.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- a. The department receives documentation the minor's health care provider has explained to the parent or legal guardian with responsibility for health care decisions for the minor the potential risks ~~and benefits~~ of the use of pediatric medical marijuana ~~to treat or alleviate the debilitating medical condition;~~ and

<sup>88</sup> **SECTION 6. AMENDMENT.** Subsection 7 of section 19-24.1-10 of the North Dakota Century Code is amended and reenacted as follows:

7. A registered qualifying patient's certifying health care provider ~~shall~~may notify the department in writing if the health care provider's registered qualifying patient no longer has a debilitating medical condition ~~or if the~~. The health care provider ~~no longer believes the patient will receive therapeutic or palliative benefit from the medical use of marijuana~~may notify the department if a bona fide provider-patient relationship ceases to exist. The qualifying patient's registry identification card becomes void immediately upon the health care provider's notification of the department and the registered qualifying patient shall dispose of any usable marijuana in the cardholder's possession within fifteen calendar days, in accordance with rules adopted under this chapter.

<sup>89</sup> **SECTION 7. AMENDMENT.** Subsection 3 of section 19-24.1-11 of the North Dakota Century Code is amended and reenacted as follows:

3. If a health care provider ~~states in~~limits the written certification that ~~the qualifying patient would benefit from the medical use of marijuana until a specified date, less than one year, the registry identification card expires on that date.~~

<sup>90</sup> **SECTION 8. AMENDMENT.** Subsection 10 of section 19-24.1-32 of the North Dakota Century Code is amended and reenacted as follows:

10. A health care provider is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity, solely for providing a written

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<sup>86</sup> Section 19-24.1-04 was also amended by section 4 of House Bill No. 1119, chapter 191.

<sup>87</sup> Section 19-24.1-05 was also amended by section 5 of House Bill No. 1417, chapter 190.

<sup>88</sup> Section 19-24.1-10 was also amended by section 6 of House Bill No. 1417, chapter 190.

<sup>89</sup> Section 19-24.1-11 was also amended by section 7 of House Bill No. 1417, chapter 190.

<sup>90</sup> Section 19-24.1-32 was also amended by section 7 of House Bill No. 1119, chapter 191, and section 9 of House Bill No. 1417, chapter 190.

certification or for otherwise stating in the health care provider's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of usable marijuana to treat or alleviate the patient's debilitating medical condition or for refusing to provide written certification or a statement. This chapter does not release a health care provider from the duty to exercise a professional standard of care for evaluating or treating a patient's medical condition.

**SECTION 9. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 194

### SENATE BILL NO. 2210

(Senators Klein, Heckaman, Wardner)  
(Representatives Boschee, Louser, Pollert)

AN ACT to amend and reenact sections 19-24.1-17 and 19-24.1-24 of the North Dakota Century Code, relating to medical marijuana manufacturing facilities; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 19-24.1-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **19-24.1-17. Compassion centers - Registration certificates nontransferable - Notification of changes.**

1. A registration certificate authorizing operation of a compassion center may not be transferred to another person. Unless a compassion center applies for and receives an amended registration certificate authorizing operation of a compassion center, the registration certificate is void if there is a change in ownership of the compassion center, there is a change in the authorized physical location of the compassion center, or if the compassion center discontinues operation.
2. A compassion center shall provide the department a written notice of any change described under this section at least sixty calendar days before the proposed effective date of the change. The department shall authorize the use of additional structures located within five hundred feet [152.40 meters] of the location described in the original application, unless the department makes an affirmative finding the use of additional structures would jeopardize public health or safety or would result in the compassion center being within one thousand feet [304.80 meters] of a property line of a pre-existing public or private school. The department may waive all or part of the required advance notice to address emergent or emergency situations.

**SECTION 2. AMENDMENT.** Section 19-24.1-24 of the North Dakota Century Code is amended and reenacted as follows:

##### **19-24.1-24. Compassion centers - Cannabis plants.**

~~The health council shall adopt rules establishing the maximum amount of plants of the genus cannabis and the amount of marijuana and usable marijuana a compassion center may possess. Except as otherwise provided under this section, the rules may not allow a manufacturing facility to possess more than one thousand plants, regardless of the stage of growth, and may not allow a dispensary to possess more than three thousand five hundred ounces [99.22 kilograms] of usable marijuana at any time, regardless of formulation.~~

1. A manufacturing facility shall grow an amount of marijuana sufficient to meet the qualifying patient population demands. For every five hundred plants in

excess of one thousand plants a manufacturing facility possesses, the manufacturing facility shall pay the department an additional certification fee of ten thousand dollars. This fee is due at the time of increase and again at renewal of the compassion center registration certificate under section 19-24.1-16.

2. A dispensary may not possess more than three thousand five hundred ounces [99.22 kilograms] of usable marijuana at any time, regardless of formulation.
3. The health council shall adopt rules ~~may~~to allow a manufacturing facility to possess no more than an additional fifty plants for the exclusive purpose of department-authorized research and development related to production and processing. These plants are not counted in a manufacturing facility possession amount and are not subject to an additional fee.

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

Approved March 28, 2019

Filed March 29, 2019

# GAME, FISH, PREDATORS, AND BOATING

## CHAPTER 195

### HOUSE BILL NO. 1412

(Representatives Tveit, Fegley, C. Johnson, Laning)  
(Senators Myrdal, Osland, Unruh)

AN ACT to amend and reenact sections 20.1-01-08 and 20.1-05-04 of the North Dakota Century Code, relating to hunting predators at night with artificial light, digital night vision, thermal vision, or infrared light.

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

**SECTION 1. AMENDMENT.** Section 20.1-01-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **20.1-01-08. Hunting with artificial light prohibited - Exception.**

It is unlawful for an individual to pursue, shoot, kill, take, or attempt to take any wildlife between sunset of one day and sunrise of the next, with the aid of a spotlight or any other artificial light. ~~This section does not make it unlawful for an~~ except:

1. An individual or the individual's agent ~~to~~ may use a lantern, spotlight, night vision, thermal vision, infrared light, or other artificial light to assist the ~~person's~~ individual in pursuing and shooting on the ~~person's~~ individual's premises any coyote, fox, skunk, mink, raccoon, beaver, weasel, ~~owl,~~ rabbit, or other predatory animal ~~or~~ bird; attacking and attempting to destroy the ~~person's~~ individual's poultry, livestock, or other property. ~~It is permissible to,~~ and
2. An individual may use an artificial light, night vision, thermal vision, or infrared light with a power source of not more than six volts while hunting afoot for coyote, fox, raccoon, or beaver during the open season on the animal. ~~A~~ The artificial light must produce a red, green, or amber filter ~~must be placed on any artificial light~~ color when used in the hunting of coyote, fox, raccoon, or beaver, except when taking a raccoon treed or at bay.

<sup>91</sup> **SECTION 2. AMENDMENT.** Section 20.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-05-04. Using certain animals and artificial lights in taking big game unlawful.**

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<sup>91</sup> Section 20.1-05-04 was also amended by section 1 of House Bill No. 1209, chapter 200.



~~No person, to hunt, pursue, kill, take, or attempt~~While hunting, pursuing, killing, taking, or attempting to take, or to aid in the hunting or taking of, any big game animal, an individual may not:

1. Use any animal except horses or mules.
2. Use ~~any~~ artificial light, including ~~spotlights and a spotlight~~ or automobile ~~and~~ motorcycle ~~headlights~~ headlight.
3. Engage in the practice commonly known as shining for deer. An individual who shines ~~any~~ an area commonly frequented by big game animals with ~~any~~ artificial light, between the hours of sunset and sunrise, is in violation of this section. However, an individual may use ~~a flashlight~~ an artificial light, night vision, thermal vision, or infrared light with a power source of not ~~over~~ more than six volts in the area while hunting a foot to take coyote, fox, raccoon, or beaver.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 196

### SENATE BILL NO. 2138

(Senators J. Lee, Unruh)  
(Representatives Damschen, Mitskog, Porter)

AN ACT to amend and reenact subsection 10 of section 20.1-02-05 of the North Dakota Century Code, relating to allowing physician assistants and advanced practice registered nurses to verify the physical conditions necessary for special hunting permits to be issued to individuals to shoot from stationary motor vehicles.

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

<sup>92</sup> **SECTION 1. AMENDMENT.** Subsection 10 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

10. Issue special permits to shoot wildlife from a stationary motor vehicle upon application from individuals who are physically unable to walk for purposes of hunting or taking wildlife or who have lost the use of an arm at or below the elbow. The application must be accompanied by a ~~physician's statement verifying from a physician, physician assistant, or advanced practice registered nurse which verifies~~ the ~~person's~~ individual's condition, and if used to hunt on lands controlled by the board of university and school lands, must designate the land on which the individual intends to hunt. The permittee must have permission from the lessee and the commissioner of university and school lands to hunt on lands controlled by the board of university and school lands. A permit issued under this subsection allows the permittee to drive, or to be driven, onto any land for the purposes of hunting wildlife, except that neither any other passenger within the vehicle nor the driver, if someone other than the permittee, may be a hunter, unless the other ~~person~~ individual also is ~~also~~ a permittee. ~~Provided, however, that if~~ 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 ~~first~~ must ~~first~~ obtain the consent of the owner or lessee to hunt on the land in the manner provided in this title.

Approved April 8, 2019

Filed April 9, 2019

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<sup>92</sup> Section 20.1-02-05 was also amended by section 1 of House Bill No. 1366, chapter 197.

## CHAPTER 197

### HOUSE BILL NO. 1366

(Representatives Schauer, K. Koppelman, Pyle, Satrom, Toman)

AN ACT to amend and reenact subsection 11 of section 20.1-02-05 of the North Dakota Century Code, relating to the use of a telescopic sight on a crossbow by an individual who is blind, paraplegic, or has lost the use of one or both arms.

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

<sup>93</sup> **SECTION 1. AMENDMENT.** Subsection 11 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

11. Issue to any individual who is blind, is a paraplegic, or who has lost the use of one or both arms a special permit to hunt game with a crossbow if that individual otherwise complies with and qualifies under the licensing and other provisions of this title. Battery-powered and electronic-lighted sight pins and telescopic sights not exceeding a maximum power of ~~four by thirty-two millimeter~~<sup>eight</sup> may be attached to crossbows used for hunting under this subsection. However, an individual who is blind and who receives a special permit to hunt game with a crossbow under this subsection may hunt only on a preserve or area approved by the director. For purposes of this subsection, an individual who is blind means an individual who is totally blind, whose central visual acuity does not exceed twenty/two hundred in the better eye with corrective lenses, or in whom the widest diameter of the visual field is no greater than twenty degrees.

Approved April 23, 2019

Filed April 24, 2019

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<sup>93</sup> Section 20.1-02-05 was also amended by section 1 of Senate Bill No. 2138, chapter 196.

## CHAPTER 198

### SENATE BILL NO. 2293

(Senators Oehlke, Kreun, J. Roers)  
(Representatives Jones, Mock, Porter)

AN ACT to create and enact a new section to chapter 20.1-02, a new section to chapter 20.1-03, and a new section to chapter 20.1-13 of the North Dakota Century Code, relating to the creation of the aquatic nuisance species program fund and surcharges for fishing, combination, and waterfowl licenses and requiring aquatic nuisance species fees for motorboats; to amend and reenact sections 20.1-02-16.1 and 20.1-03-12 of the North Dakota Century Code, relating to the investment of the state game and fish fund and aquatic nuisance species fees for motorboats; to provide a penalty; to provide an appropriation; to provide for a transfer; to provide an exemption; to provide an effective date; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

##### **Aquatic nuisance species program fund.**

There is created in the state treasury a special fund known as the aquatic nuisance species program fund. The fund consists of transfers and deposits made in accordance with section 20.1-02-16.1 and section 5 of this Act.

<sup>94</sup> **SECTION 2. AMENDMENT.** Section 20.1-02-16.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **20.1-02-16.1. Game and fish fund - Use - Required balance - Budget section approval.**

All income of the state game and fish department deposited by the director with the state treasurer must be credited to the state game and fish fund and the fund may be used only by the department. All money derived from the investment of the fund, special accounts, or portions of the fund ~~must~~ may be credited to the game and fish department private land habitat and access improvement fund. The department shall spend moneys in the game and fish fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below fifteen million dollars, unless otherwise authorized by the budget section.

**SECTION 3. AMENDMENT.** Section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **20.1-03-12. Schedule of fees for licenses and permits.**

The fees collected under this section for licenses and permits must be deposited with the state treasurer and credited to the game and fish fund, except aquatic

<sup>94</sup> Section 20.1-02-16.1 was also amended by section 4 of Senate Bill No. 2017, chapter 42, and section 4 of Senate Bill No. 2055, chapter 438.

nuisance species fees must be deposited with the state treasurer and credited to the aquatic nuisance species program fund. Forty-five dollars of each nonresident big game hunting license fee must be used for the private land initiative. The various license and permit fees are as follows:

1. For a resident, age sixteen and over, small game hunting license, ten dollars.
2. For a nonresident small game hunting license, one hundred dollars.
3. For a resident big game hunting license, thirty dollars, except the fee for a licensee under age sixteen is ten dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.
4. Except for a nonresident who participates on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents under subsection 4 of section 20.1-03-11, for a nonresident big game hunting license, two hundred fifty dollars, and for a nonresident bow license, two hundred fifty dollars, and a nonrefundable five dollar application fee must accompany any lottery license fee under this subsection, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1. For a nonresident who participates on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents, fifty dollars.
5. For a resident fur-bearer license, fifteen dollars.
6. For a resident fishing license, sixteen dollars, except that for a resident sixty-five years or over, a resident totally or permanently disabled, or a resident disabled veteran who has a fifty percent service-connected disability as determined by the department of veterans' affairs or has an extra-schedular rating to include individual unemployability that brings the veteran's total disability ratio to fifty percent, the license fee is five dollars.
7. For a nonresident fishing license, forty-five dollars.
8. For a resident husband and wife fishing license, twenty-two dollars.
9. For a nonresident nongame hunting license, fifteen dollars.
10. For a resident wild turkey permit, fifteen dollars.
11. For an annual general game license, three dollars.
12. For a license to a nonresident buyer or shipper of green furs, or that person's agent, the amount that the nonresident buyer or shipper of green furs would pay for a nonresident buyer or shipper of green furs license or comparable license in that person's state of residence, or fifty dollars, whichever is greater.
13. For a license to a resident buyer or shipper of green furs, eight dollars for each place of business maintained by that person within this state.
14. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.
15. For an annual license to practice taxidermy, twenty-five dollars.

16. 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.
17. For a permit to make collections of protected birds and animals for scientific purposes, ten dollars.
18. For a motorboat certificate of number and license: Each motorboat under sixteen feet [4.88 meters] in length, and all canoes, regardless of length, powered by a motor, eighteen dollars. Each motorboat sixteen feet [4.88 meters] in length and over but shorter than twenty feet [6.1 meters] in length, excluding canoes, thirty-six dollars. Each motorboat twenty feet [6.1 meters] in length or over excluding canoes, forty-five dollars.
19. For the taking of undesirable fish from the waters of this state pursuant to section 20.1-06-05, fifteen dollars for each hoop-net or trap, and fifteen dollars for each seine of fifty feet [15.24 meters] or any fraction thereof.
20. For a resident paddlefish tag annual license, ten dollars per tag.
21. For a nonresident paddlefish tag annual license, twenty-five dollars and fifty cents per tag.
22. For an annual resident license to sell minnows or other live bait at wholesale, fifty dollars.
23. For an annual license to sell minnows or other live bait at retail, fifteen dollars, except the fee is seventy-five dollars if white suckers are sold.
24. For an annual license to operate a private fish hatchery, seventy-five dollars.
25. For a resident commercial frog license, fifty dollars.
26. For a nonresident commercial frog license, two hundred dollars.
27. For a resident frog license, three dollars.
28. For a resident husband and wife frog license, five dollars.
29. For a shooting preserve operating permit, one hundred dollars, plus thirty cents per acre [.40 hectare] for each acre [.40 hectare].
30. For a nonresident waterfowl hunting license, one hundred dollars.
31. For a nonresident husband and wife fishing license, sixty dollars.
32. For a nonresident short-term three-day fishing license, twenty-five dollars.
33. For a nonresident fur-bearer and nongame hunting license, forty dollars.
34. For a combination license, fifty dollars.
35. For a white-tailed deer license sold to certified guides or outfitters and provided by them to nonresidents, two hundred fifty dollars.

36. For a resident swan license, ten dollars.
37. For a nonresident swan license, thirty dollars.
38. For a resident sandhill crane license, ten dollars.
39. For a nonresident sandhill crane license, thirty dollars.
40. For a resident commercial clam license, one hundred dollars.
41. For a nonresident commercial clam license, one thousand dollars.
42. For a commercial clam dealer's permit, two thousand dollars. In addition, the applicant shall submit to the director a surety bond in the sum of two thousand dollars.
43. For an annual class B nonresident license to sell minnows or other live bait at wholesale, two hundred fifty dollars.
44. For a bighorn sheep license issued to a nonresident, five hundred dollars.
45. For a nonresident reciprocal trapping license, three hundred fifty dollars.
46. For a nonresident spring white goose license, fifty dollars.
47. 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.
48. For a nonresident short-term ten-day fishing license, thirty-five dollars.
49. For a nonresident wild turkey permit, eighty dollars.
50. For a statewide nonresident waterfowl hunting license, one hundred fifty dollars.
51. For an annual class A nonresident license to sell minnows or other live bait at wholesale, five hundred dollars.
52. For a resident early Canada goose season license, five dollars.
53. For a nonresident early Canada goose season license, fifty dollars.
54. For a resident disabled veteran combined general game, habitat stamp, small game, and fur-bearer license, three dollars.
55. For each motorboat licensed in this state, an aquatic nuisance species fee of fifteen dollars valid concurrent with motorboat licensure.
56. For each motorboat operated on waters of this state and not licensed in this state, an aquatic nuisance species fee of fifteen dollars for the calendar year in which it is paid.

**SECTION 4.** A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

**Fishing, combination, and waterfowl license surcharge.**

The director shall establish a surcharge of two dollars on each resident fishing license and combination license except for the resident sixty-five years of age or older license, permanently or totally disabled license, or a disabled veteran license as defined in subsection 6 of section 20.1-03-12. The director also shall establish a surcharge of three dollars on each nonresident fishing license and each nonresident waterfowl hunting license issued under section 20.1-03-12. The collected surcharge fees must be deposited with the state treasurer and credited to the aquatic nuisance species program fund.

**SECTION 5.** A new section to chapter 20.1-13 of the North Dakota Century Code is created and enacted as follows:

**Operation of motorboat without payment of aquatic nuisance species fee prohibited - Penalty.**

1. For each motorboat operated on waters of this state, an aquatic nuisance species fee must be paid.
  - a. For each motorboat licensed in this state, the fee is due at the time of motorboat licensure.
  - b. For each motorboat operated on waters of this state and exempt from licensure in this state, the owner shall pay the fee and, after payment of the fee, must be issued an aquatic nuisance species sticker from the department. The sticker must be attached to the motorboat in a manner prescribed by the department so the sticker is clearly visible.
2. Fees collected under this section must be deposited with the state treasurer and credited to the aquatic nuisance species program fund.
3. A person that violates this section is guilty of a class 2 noncriminal offense.

**SECTION 6. APPROPRIATION - 2017-19 BIENNIUM - TRANSFER - EXEMPTION.** There is appropriated out of any moneys in the state game and fish fund in the state treasury, not otherwise appropriated, the sum of \$467,100, or so much of the sum as may be necessary, to the game and fish department for the purpose of administering aquatic nuisance species education, inspection, and monitoring programs, for the period beginning with the effective date of this Act, and ending June 30, 2019. The funding provided in this section is not subject to section 54-44.1-11 and may be continued into the biennium beginning July 1, 2019, and ending June 30, 2021. The game and fish department shall transfer moneys deposited in the aquatic nuisance species program fund to the state game and fish fund to repay any moneys expended from the state game and fish fund under this section.

**SECTION 7. APPROPRIATION - AQUATIC NUISANCE SPECIES PROGRAM FUND.** There is appropriated out of any moneys in the aquatic nuisance species program fund in the state treasury, not otherwise appropriated, the sum of \$1,500,000, or so much of the sum as may be necessary, to the game and fish department for use in aquatic nuisance species education, inspection, and monitoring programs under chapter 20.1-17, for the period beginning with the effective date of this Act, and ending June 30, 2021. The game and fish department is authorized two full-time equivalent positions for this purpose.



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**SECTION 8. EFFECTIVE DATE.** Section 3 of this Act becomes effective on January 1, 2020.

**SECTION 9. EFFECTIVE DATE.** Section 4 of this Act becomes effective on April 1, 2020.

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

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 199

### HOUSE BILL NO. 1246

(Representatives D. Anderson, Porter, Schreiber-Beck, Strinden)

AN ACT to amend and reenact section 20.1-03-11 of the North Dakota Century Code, relating to gratis tags for hunting big game; and to provide for a legislative management study.

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

**SECTION 1. AMENDMENT.** Section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

##### **20.1-03-11. License to hunt big game required - Limitations on licenses.**

1. An individual may not hunt, kill, take, or attempt to take any big game without having the appropriate big game hunting license and a locking seal bearing a number corresponding to the number of the big game hunting license or stamp. The locking seal must be issued as an integral part of the big game hunting license. Except as otherwise provided in this subsection, an individual may not apply for or be issued a big game hunting license unless that individual's fourteenth or subsequent birthday occurs in the same year as the respective big game hunting season. This age limitation does not apply to applicants for big game licenses for hunting by bow and arrow. Each violation of this section is a distinct and separate offense. The following provisions govern youth deer and antelope hunting:
  - a. An individual whose eleventh, twelfth, or thirteenth birthday occurs in the same year as a youth deer hunting season is entitled to receive a statewide white-tailed antlerless deer permit but may hunt only in that youth deer hunting season.
  - b. An individual whose twelfth or thirteenth birthday occurs in the same year as an antelope hunting season is entitled to apply for an antelope permit for that season.
  - c. An individual hunting under subdivision a or b must be accompanied by the individual's parent, guardian, or other individual authorized by the individual's parent or guardian. As used in this section, "accompanied" means to stay within a distance that permits uninterrupted visual contact and unaided verbal communication.
2. The number of licenses issued, including those licenses issued without charge under the provisions of this section, ~~shall~~may not exceed the number of licenses authorized by the governor's proclamation issued pursuant to section 20.1-08-04.
3. a. An individual, corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate that hold title to at least one hundred fifty acres [60.70 hectares] of land is eligible to ~~apply~~submit one application for a license to hunt deer without charge, or if

- the individual named to receive the license is a nonresident, upon payment of the fee required for a nonresident big game license.
- b. A resident that is an individual, corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate that has executed a lease for at least one hundred fifty acres [60.70 hectares] of land and that actively farms or ranches that land is eligible to applysubmit one application for a license to hunt deer without charge. Upon request, a lessee shall provide proof the land described in the completed application is leased for agricultural purposes. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. An individual issued a license under this subsection must be a resident.
  - c. Applications must include a legal description of the eligible land, must be within a unit open for the hunting of deer, and must be signed. A license issued under this subsection is valid for the deer bow, deer gun, and muzzleloader seasons until filled and only upon the land described in the application.
  - d. If the eligible applicant in subdivisions a and b is a corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate, only one license may be issued and the license must be issued in the name of an individual shareholder, member, partner, beneficiary, or holder of a life estate.
  - e. An individual who is eligible for a license under subsections a and b may transfer that eligibility for the license to a spouse or legal dependent residing customarily with that individual. An individual may be eligible for only one license. No more than one license may be issued under this subsection for all qualifying land. An individual transferring eligibility under this subsection may not receive a license under subsections a and b for seasons for which the eligibility was transferred.
  - f. An individual, that individual's spouse, and their children who have a license issued under subsections a and b may hunt together on land described in any of the applications making them eligible for the license. Family members hunting together under this provision must hunt within the same unit within which the land described in the application making them eligible for the license is located.
  - g. Applications for license issued under subsections a, b, and f received by the game and fish department on or before the date of the application deadline for deer gun lottery will be issued as any legal deer. Applications for license issued under subsections a, b, and f received by the game and fish department after the application deadline will be issued based on licenses available.
4. One percent of the total deer licenses and permits to hunt deer with guns to be issued in any unit or subunit as described in the governor's proclamation, including licenses issued to nonresidents under subsection 3, must be allocated for nonresidents. Notwithstanding the number of licenses allocated under this subsection, upon payment of the fee requirement for a nonresident who participates on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents, a nonresident may participate

on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents.

5.
  - a. A resident who that is an individual, corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate, and has executed a lease for at least one hundred fifty acres [60.70 hectares] of land and who that the resident actively farms or ranches that land; or a resident who that is an individual, corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate, and holds title to at least one hundred fifty acres [60.70 hectares] of land, is eligible to apply submit one application for a license to hunt antelope without charge upon filing a signed application describing that land. The land must be within a unit open for the hunting of antelope. The license must include a legal description of the eligible land described in the completed application and may be used to hunt antelope only upon that land. Upon request, a lessee shall provide proof that the land described in the completed application is leased for agricultural purposes. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. An individual licensed under this subsection must be a resident.
  - b. If the eligible applicant is a corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate, only one license may be issued, and the license must be issued in the name of an individual shareholder, member, partner, beneficiary, or holder of a life estate.
  - c. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility under this subsection may not receive a license under this subsection for the season for which eligibility was transferred. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license.
  - d. The number of licenses issued without charge under this subsection may not exceed the total number of licenses prescribed for each district or unit in the governor's proclamation. If the number of eligible persons who apply for licenses issued without charge under this subsection exceeds the number of licenses prescribed for the district or unit in the governor's proclamation less any licenses that are otherwise designated to be issued with a charge under this subsection, the licenses to be issued without charge must be issued by lottery as prescribed in the governor's proclamation. If the number of licenses prescribed for the district or unit in the governor's proclamation exceeds fifty and if the number of applications for these licenses exceeds the number of licenses prescribed for the district or unit in the governor's proclamation, then one-half of the licenses exceeding fifty must be issued by lottery as prescribed in the governor's proclamation and may not be issued to landowners without charge.
6. A person who is unable to 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, a person who is unable to 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.

7.
  - a. A resident who that is an individual, corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate, and has executed a lease for at least one hundred fifty acres [60.70 hectares] of land and who that the resident actively farms or ranches that land; or a resident who that is an individual, corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate and holds title to at least one hundred fifty acres [60.70 hectares] of land, is eligible to apply submit one application for a license to hunt elk upon filing a signed application describing that land and payment of the fee requirement for a resident big game license. The land must be within a unit open for the hunting of elk. The license must include a legal description of the eligible land described in the completed application and may be used to hunt elk within the district or unit in which the land described in the completed application is located. Upon request, a lessee shall provide proof that the land described in the completed application is leased for agricultural purposes. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. An individual issued a license under this subsection must be a resident.
  - b. If the eligible applicant is a corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate, only one license may be issued, and the license must be issued in the name of an individual shareholder, member, partner, beneficiary, or holder of a life estate.
  - c. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license.
  - d. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. The number of licenses issued under this subsection for each designated district or unit for hunting elk may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of licenses allocated to that district or unit, the licenses to be issued must be issued by weighted lottery as prescribed in the governor's proclamation. Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's proclamation is fewer than twenty.

- e. The director may issue special elk depredation management licenses to landowners in designated areas around Theodore Roosevelt national park upon payment of the fee requirement for a resident big game license. The provisions of this section governing the number of licenses issued for each designated district or unit for hunting elk do not apply to special elk depredation management licenses and a person who receives such a license under this subsection is eligible to apply for a license to hunt elk in future years and is eligible to participate in the raffle under section 20.1-08-04.6.
- f. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection.
8. a. A resident who that is an individual, corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate, and has executed a lease for at least one hundred fifty acres [60.70 hectares] of land and who that the resident actively farms or ranches that land; or a resident who that is an individual, corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate and holds title to at least one hundred fifty acres [60.70 hectares] of land, is eligible to apply submit one application for a license to hunt moose without charge upon filing a signed application describing that land. The land must be within a unit open for the hunting of moose. The license must include a legal description of the eligible land described in the completed application and may be used to hunt moose only upon that land. Upon request, a lessee shall provide proof that the land described in the completed application is leased for agricultural purposes. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. An individual issued a license under this subsection must be a resident.
- b. If the eligible applicant is a corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate, only one license may be issued, and the license must be issued in the name of an individual shareholder, member, partner, beneficiary, or holder of a life estate.
- c. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or a legal dependent residing customarily with the resident , but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility under this subsection is not eligible to apply for a license to hunt moose in future years but is eligible to participate in the raffle under section 20.1-08-04.2. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license.
- d. The number of licenses issued under this subsection for a district or unit may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for that district or unit. If the number of eligible persons who apply for a license under this subsection exceeds the number of licenses available under this subsection, the licenses must be issued by lottery as prescribed in the governor's proclamation.

- e. A person who receives a license under this subsection and who is successful in harvesting a moose is not eligible to apply for a license to hunt moose in future years but is eligible to participate in the raffle under section 20.1-08-04.2. Notwithstanding this subsection, if a person other than the transferee of license eligibility is unsuccessful in harvesting a moose under this subsection, that person may return the unused license to the department and is eligible to apply for, but not transfer, an additional license to hunt moose in future years. A person who receives a second license under this subsection is not eligible to participate in the raffle under section 20.1-08-04.2. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the completed application is located, unless the person has sold or otherwise transferred the person's rights to the land described in the completed application.
- f. The governor's proclamation may restrict the area of land within a unit open for the hunting of moose for which a preferential license is issued under this subsection. If the proclamation restricts the area for issuance of preferential licenses, an applicant must own or lease land within the restricted area to be eligible to apply for a license to hunt moose upon payment of the fee required for a resident big game license. The license may be used to hunt moose within the entire unit in which the land described in the completed application is located. A successful applicant from a restricted area may not return an unused license to regain eligibility for a license to hunt moose in future years. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection.
- g. The director may issue special moose depredation management licenses to landowners in areas designated by the director upon payment of the fee required for a resident big game license. The provisions of this section governing the number of licenses issued for each designated district or unit for hunting moose do not apply to special moose depredation management licenses. A person receiving a moose depredation management license under this subsection is eligible to apply for a license to hunt moose in future years and is eligible to participate in the raffle under section 20.1-08-04.2.
9. A person who holds a valid license to hunt deer may hunt the same species and sex of deer, for which that person's license is valid, on land in an adjoining unit for which that person would be eligible for a gratis deer license under subsection 3.
10. Fifteen percent of the total mule deer licenses and permits to hunt mule deer made available in the immediately preceding year for the regular gun season must be made available to nonresidents to hunt any deer with bow and arrow.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - GRATIS HUNTING LICENSES.** During the 2019-20 interim, the legislative management shall consider studying gratis licenses to hunt deer, antelope, elk, and moose. The study must include consideration of the minimum acreage requirements for a gratis license, restrictions on where individuals with gratis licenses to hunt moose may hunt, how gratis licenses to hunt deer are allocated in units to ensure an adequate supply remains available for individuals with other licenses to hunt deer, and whether

eligibility for a gratis license to hunt moose should be annual or once in a lifetime. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 10, 2019

Filed April 11, 2019



## CHAPTER 200

### HOUSE BILL NO. 1209

(Representatives M. Ruby, Eidson, Grueneich, Johnston, Monson, Simons)  
(Senators Bekkedahl, O. Larsen, Meyer)

AN ACT to amend and reenact section 20.1-05-04 of the North Dakota Century Code, relating to the use of dogs in the recovery of big game.

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

<sup>95</sup> **SECTION 1. AMENDMENT.** Section 20.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **20.1-05-04. Using certain animals and artificial lights in taking big game unlawful.**

1. No person, to hunt, pursue, kill, take, or attempt to take, or to aid in the hunting or taking of, any big game animal, may:
  - a. Use any animal except horses or mules:
    - (1) Horses;
    - (2) Mules; or
    - (3) For the recovery of big game animals, dogs:
      - (a) The dog must be leashed and under the physical control of a handler at all times;
      - (b) The dog must be accompanied at all times by both a handler and the hunter responsible for the taking of the big game animal;
      - (c) Individuals involved in the recovery of the big game animal may not carry a firearm or archery equipment during the recovery;
      - (d) If a big game animal is found alive during the recovery, the dog and handler shall leave the immediate area; and
      - (e) Before the beginning of the recovery, the handler of the dog shall notify the district game warden of the involvement of the dog in the recovery of the big game animal and provide to the district game warden the contact information of all parties involved in the hunt and the location in which the big game animal was tracked.
  - b. Use any artificial light, including spotlights and automobile and motorcycle headlights, except artificial light may be used in the recovery process of big game animals.

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<sup>95</sup> Section 20.1-05-04 was also amended by section 2 of House Bill No. 1412, chapter 195.

3. c. Engage in the practice commonly known as shining for deer. An individual who shines any area commonly frequented by big game animals with any artificial light, between the hours of sunset and sunrise, is in violation of this section. However, an individual may use a flashlight with a power source of not over six volts to take raccoon or beaver.
2. For purposes of this section, "recovery" means the time after a firearm or archery equipment is used in the taking of a big game animal until the expired animal is located.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 201

### HOUSE BILL NO. 1462

(Representatives Strinden, Beadle, Hager, Marschall, Schauer)  
(Senator Clemens)

AN ACT to amend and reenact section 20.1-05.1-01 of the North Dakota Century Code, relating to special allocation hunting licenses.

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

**SECTION 1. AMENDMENT.** Section 20.1-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **20.1-05.1-01. Special allocation hunting license authorization.**

1. The director shall authorize issuance of the following annual special allocation hunting licenses:
  1. a. Four any deer licenses and six any white-tailed deer licenses per year to the injured military wildlife project of North Dakota for distribution. A license issued under this subsection is valid during the period of the deer bow season.
  2. b. One license per year to the national wild turkey federation to hunt wild turkeys in the spring in the manner, places, and times as the governor provides by proclamation. The national wild turkey federation shall hold a raffle for, or may auction to the highest bidder, whether resident or nonresident, the license to hunt wild turkeys. If an individual receives a wild turkey license through the raffle or auction, the individual is not eligible to receive a wild turkey license through the game and fish department that year. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. Ten percent of the net proceeds of the raffle may be retained by the local, state, or national wild turkey federation entity conducting the raffle. All remaining net proceeds must be deposited in the national wild turkey federation superfund and used for wild turkey management and related projects in this state. The national wild turkey federation shall submit reports concerning the raffle as the director requires.
  3. c. Up to two licenses per year to the outdoor adventure foundation to hunt a turkey in the spring season. The foundation shall make authorized licenses available to sponsored qualified youths to hunt as the governor provides by proclamation. A qualified youth receiving a license under this section must comply with hunter education requirements and if under the age of eighteen must be accompanied by an adult twenty-one years of age or older. As used in this section, "qualified youth" means an individual who has cancer or a life-threatening illness, is of legal age to hunt a turkey, is under twenty-five years of age, is a resident, and is sponsored by the foundation. The foundation must provide the department supporting documentation demonstrating compliance with this section.

4. d. One license per year to the midwest chapter of the wild sheep foundation to hunt bighorn sheep in the manner, places, and times as the governor provides by proclamation. The midwest chapter of the wild sheep foundation shall hold a raffle or auction under rules adopted by the director with residents and nonresidents eligible to participate. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection. Ten percent of gross raffle proceeds may be retained by the midwest chapter of the wild sheep foundation and ninety percent of gross raffle proceeds must be remitted to the department. All auction proceeds must be remitted to the department. An individual who receives a license through the raffle or auction may not transfer the license.
5. e. One license per year to the North American wildlife enforcement memorial museum and educational center to hunt moose in a manner, places, and times as the governor provides by proclamation. The North American wildlife enforcement memorial museum and educational center shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. The individual who receives the license from the raffle may not transfer the license. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. The net proceeds distributed to the North American wildlife enforcement memorial museum and educational center must be used for construction and maintenance of the North American wildlife enforcement memorial museum and educational center located at the International Peace Garden. The North American wildlife enforcement memorial museum and educational center shall submit reports concerning the raffle as the director requires. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection.
6. f. One license per year to the rocky mountain elk foundation to hunt elk in a manner, places, and times as the governor provides by proclamation. The rocky mountain elk foundation shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. The net proceeds distributed to the rocky mountain elk foundation must be used for elk management or other wildlife and conservation-related projects in North Dakota as described under rocky mountain elk foundation policies and objectives. The rocky mountain elk foundation shall submit reports concerning the raffle as the director requires. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection.
7. g. One license per year to the mule deer foundation to hunt mule deer in the manner, places, and times as the governor provides by proclamation. The mule deer foundation shall hold a raffle or auction under rules adopted by the director with residents and nonresidents eligible to participate. If an individual receives a mule deer license through the raffle or auction, the individual is not eligible to receive a mule deer license through the game and fish department that year. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and all net proceeds of the raffle or auction must be used for mule deer management

- and related projects in North Dakota. The mule deer foundation shall submit reports concerning the raffle or auction as the director requires.
- 8- h. One license per year to the North Dakota hunter educators association to hunt antelope in the manner, places, and times as the governor prescribes by proclamation. The North Dakota hunter educators association shall hold a raffle under rules adopted by the director. Only residents are eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and all net proceeds of the raffle must be used for sponsoring mentored hunts for youth who may otherwise not have the means to go afield to hunt, establishing a statewide network of shooting locations for youth to become familiar with archery equipment and firearms under the supervision of a certified volunteer hunter education instructor, and purchasing advertising in news media during hunting season concerning firearms safety and hunting ethics and the promotion of safe and responsible hunting. If an individual receives an antelope license through the raffle, the individual is not eligible to apply for an antelope license through the game and fish department that year. The North Dakota hunter educators association shall submit reports concerning the raffle as the director requires.
- 9- i. One any elk license, one any moose license, up to sevenfour any white-tailed deer licenses, up to three any deer licenses, and up to two antelope licenses to the outdoor adventure foundation to hunt the species indicated on the license in the manner, places, and times as the governor prescribes by proclamation. The foundation shall make one license available to each qualified youth to hunt the species of big game indicated on the license as provided in the governor's proclamation. A qualified youth receiving a license issued under this section is only valid during an open season for the species indicated as prescribed by the governor's proclamation and for the year indicated on the license or tag. If a qualified youth is hunting on private land with written permission from the landowner and with a license issued under this section, the qualified youth may use any weapon that is legal in any season for the species being hunted. A qualified youth receiving a license under this section must comply with hunter education requirements and if under the age of eighteen must be accompanied by an adult twenty-one years of age or older. As used in this section, "qualified youth" means an individual who has been diagnosed with cancer or a life-threatening illness, is of legal age to hunt the species for which the license is valid, is under twenty-five years of age, is a resident, and is sponsored by the foundation. The foundation must provide the department supporting documentation demonstrating compliance with this section.
2. An organization eligible to receive a license under this section shall provide an annual report on forms provided by the director. The annual report must include the name of the hunters, dates of the hunt, and the species harvested. If an organization fails to submit a complete report required under this subsection, the organization may not receive a license under this section until the organization submits the complete report. If the director determines by clear and convincing evidence that a criminal violation of a state hunting, fishing, or trapping law occurred during a hunt conducted with a license issued under this section, the director may not issue a license under this section for a period of one year to the organization that conducted the hunt. However, the

director may issue a license under section 20.1-05.1 to the organization during the one-year period if the organization is otherwise eligible for the license.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 202

### SENATE BILL NO. 2342

(Senator Erbele)  
(Representative Brandenburg)

AN ACT to create and enact a new section to chapter 20.1-13 of the North Dakota Century Code, relating to regulation of boats to prevent excessive noise; and to provide a penalty.

#### 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:

#### **Regulation of noise from boats - Penalty.**

1. A boat operated on the waters of this state between the hours of twelve midnight and five a.m. may not produce a noise in excess of eighty-eight decibels for more than ten minutes.
2. For purposes of subsection 1, the decibel level of a boat must be measured from the shoreline closest to the location from which a complainant or other individual noticed the noise.
3. A boat operator who violates this section is guilty of a class 1 noncriminal offense.
4. A boat operator cited for a violation of this section may not operate the boat that produced the noise in violation of this section until a muffler is installed.

Approved April 23, 2019

Filed April 24, 2019

# GOVERNMENTAL FINANCE

## CHAPTER 203

### HOUSE BILL NO. 1067

(Representative Klemin)

AN ACT to amend and reenact sections 21-02-11 and 21-03-25 of the North Dakota Century Code, relating to municipal bid requirements and certificates of indebtedness.

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

**SECTION 1. AMENDMENT.** Section 21-02-11 of the North Dakota Century Code is amended and reenacted as follows:

**21-02-11. Advertising for bids - When required - Procedure similar to bond sales.**

If the governing board of a political subdivision determines to borrow upon certificates of indebtedness, ~~it~~ the governing board shall follow the procedure and is subject to the penalties prescribed in the provisions relating to the sale of bonds in chapter 21-03. ~~Certificates of indebtedness need not be advertised for bids:~~

- ~~1. If they are sold to the state board of university and school lands, the Bank of North Dakota, the public finance authority, or in case other trust funds administered by public officials are invested in them; or~~
- ~~2. If they do not exceed the total sum of one hundred thousand dollars.~~

**SECTION 2. AMENDMENT.** Section 21-03-25 of the North Dakota Century Code is amended and reenacted as follows:

**21-03-25. Bonds - Advertised for bids - Exception.**

~~No~~ A municipality may not sell or enter into any contract for the sale of any issue of its bonds authorized by this chapter in an amount exceeding one hundred ~~thousand~~ million dollars, for whatever purpose issued, without first advertising for bids in the manner prescribed by section 21-03-26, except as provided in section 21-03-30, and except that bonds issued under the authorization of subdivision g of subsection 2 of section 21-03-06 with the consent of the warrant holders, may be exchanged for matured warrants or matured interest coupons of warrants of the special improvement fund having the deficiency on account of which such bonds are being issued, without such advertising. The par value and accrued interest of the bonds so delivered may not exceed the par value and accrued interest of the warrants and interest coupons, and accrued interest thereon, for which they are exchanged.

Approved April 23, 2019

Filed April 24, 2019



## CHAPTER 204

### SENATE BILL NO. 2041

(Legislative Management)  
(Taxation Committee)

AN ACT to create and enact a new subsection to section 21-03-07 of the North Dakota Century Code, relating to the issuance of bonds by the governing body of a park district without voter approval.

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

**SECTION 1.** A new subsection to section 21-03-07 of the North Dakota Century Code is created and enacted as follows:

The governing body of any park district that constitutes a distinct municipality may issue general obligation bonds of the park district for the purpose of providing funds to acquire, lay out, and improve parks, parkways, boulevards, and pleasure drives, and to acquire land for these purposes, but the indebtedness may not at any time exceed one percent of the assessed valuation of the taxable property in the park district. The initial resolution authorizing the issuance of general obligation bonds under this subsection must be published in the official newspaper of the park district, and any owner of taxable property within the park district may, within sixty days after publication, file with the clerk of the park 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 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 park district, as last finally equalized, all further proceedings under the initial resolution are barred.

Approved April 15, 2019

Filed April 15, 2019

## CHAPTER 205

### HOUSE BILL NO. 1368

(Representatives Kempenich, Brandenburg, Kreidt, Pollert)  
(Senators Dotzenrod, Klein, Wardner)

AN ACT to amend and reenact sections 21-10-01 and 21-10-11 of the North Dakota Century Code, relating to membership of the state investment board.

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

**SECTION 1. AMENDMENT.** Section 21-10-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **21-10-01. State investment board - Membership - Term - Compensation - Advisory council.**

1. The North Dakota state investment board consists of ~~the~~:
  - a. ~~The~~ governor, ~~the~~;
  - b. ~~The~~ state treasurer, ~~the~~;
  - c. ~~The~~ commissioner of university and school lands, ~~the~~;
  - d. ~~The~~ director of workforce safety and insurance, ~~the~~;
  - e. ~~The~~ insurance commissioner, ~~three~~;
  - f. ~~Three~~ members of the teachers' fund for retirement board or the board's designees who need not be members of the fund as selected by that board, ~~two~~;
  - g. ~~Two~~ of the elected members of the public employees retirement system board as selected by that board, ~~and one~~;
  - h. One member of the public employees retirement system board as selected by that board; and
  - i. One member of the legacy and budget stabilization fund advisory board, as selected by that board, to serve as a nonvoting member.
2. The director of workforce safety and insurance may appoint a designee, subject to approval by the workforce safety and insurance board of directors, to attend the meetings, participate, and vote when the director is unable to attend. The teachers' fund for retirement board may appoint an alternate designee with full voting privileges to attend meetings of the state investment board when a selected member is unable to attend. The public employees retirement system board may appoint an alternate designee with full voting privileges from the public employees retirement system board to attend meetings of the state investment board when a selected member is unable to attend.

3. The members of the state investment board, except elected and appointed officials and the director of workforce safety and insurance or the director's designee, are entitled to receive as compensation one hundred forty-eight dollars per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.
- 2-4. The state investment board may establish an advisory council composed of individuals who are experienced and knowledgeable in the field of investments. The state investment board shall determine the responsibilities of the advisory council. Members of the advisory council are entitled to receive the same compensation as provided the members of the advisory board of the Bank of North Dakota and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09.

**SECTION 2. AMENDMENT.** Section 21-10-11 of the North Dakota Century Code is amended and reenacted as follows:

**21-10-11. Legacy and budget stabilization fund advisory board.**

1. The legacy and budget stabilization fund advisory board is created to develop recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the state investment board.
2. The goal of investment for the legacy fund is principal preservation while maximizing total return.
3. The board consists of two members of the senate appointed by the senate majority leader, two members of the house of representatives appointed by the house majority leader, the director of the office of management and budget or designee, the president of the Bank of North Dakota or designee, and the tax commissioner or designee. The board shall select a chairman and must meet at the call of the chairman.
4. The board shall report at least semiannually to the budget section.
5. Legislative members are entitled to receive compensation and expense reimbursement as provided under section 54-03-20 and reimbursement for mileage as provided by law for state officers. The legislative council shall pay the compensation and expense reimbursement for the legislative members.
6. The legislative council shall provide staff services to the legacy and budget stabilization fund advisory board.
7. The staff and consultants of the state retirement and investment office shall advise the board in developing asset allocation and investment policies.
8. The board shall develop a process to select a member of the board to serve on the state investment board in a nonvoting capacity.

Approved April 23, 2019

Filed April 24, 2019

# HEALTH AND SAFETY

## CHAPTER 206

### SENATE BILL NO. 2317

(Senators Poolman, J. Lee, Wanzek)  
(Representatives Devlin, Pollert, Satrom)

AN ACT to amend and reenact sections 23-01-37 and 23-09.3-04 of the North Dakota Century Code, relating to health care facilities and licensure of nursing facilities; to provide for a legislative management study; to provide for a report; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23-01-37 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-37. Survey program - Health facilities construction or renovation projects - Innovation waivers.**

1. The state department of health shall conduct a life safety survey process for all health facilities licensed by the division of health facilities of the state department of health during and at the conclusion of a construction, renovation, or construction and renovation project.
2. The department may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.
3. The state department of health shall make a determination on a construction, renovation, or construction and renovation project of no more than one million dollars within sixty days of receipt of a complete application.
4. The state department of health may approve a request for a waiver of a state law or rule relating to an innovative construction, renovation, or construction and renovation project if the lack of compliance does not adversely affect health or safety.
5. The department shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with Medicare-certified life safety surveys.

**SECTION 2. AMENDMENT.** Section 23-09.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.3-04. Department to establish standards - Licensing - Inspection - Survey - Prosecute violations.**

1. The department shall establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department may waive all or a portion of a license standard if the department determines the lack of compliance does not adversely affect the health or safety of residents.
2. The department shall implement a survey process for basic care facilities which for purposes of the life safety portions of the survey, all surveys must be announced; which for purposes of the health portions of the survey, half of the surveys must be announced; and which for purposes of complaints related to health and life safety, all surveys must be unannounced. As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey.
3. The department shall prosecute all violations of this chapter.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HEALTH FACILITY CONSTRUCTION.** During the 2019-20 interim, the legislative management shall consider studying the state department of health licensing process for health facility construction and renovation projects, including consideration of the appropriate role of the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 4. REPORT TO LEGISLATIVE MANAGEMENT - HEALTH FACILITY CONSTRUCTION AND RENOVATION.** Before July 1, 2020, the state department of health shall report to the legislative management on the implementation of sections 1 and 2 of this Act.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 30, 2019

Filed May 2, 2019

## CHAPTER 207

### SENATE BILL NO. 2208

(Senators J. Lee, Mathern, K. Roers)  
(Representatives Nathe, Schreiber-Beck, Tveit)

AN ACT to amend and reenact sections 23-06-03 and 23-06-31 of the North Dakota Century Code, relating to authority to and immunity for disposition of the dead.

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

<sup>96</sup> **SECTION 1. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-06-03. Duty of final disposition - Indigent burial - Decedent's instructions.**

1. The duty of disposition of the body of a deceased individual devolves upon the following individual in the order of priority:
  - a. Any legally competent adult given the duty of final disposition by the deceased individual in a statement conforming with section 23-06-31, except the legally competent adult specified in the statement conforming with section 23-06-31 may decline the duty of final disposition unless the individual would otherwise have the duty of final disposition under this section;
  - b. The surviving spouse if the deceased was married;
  - c. If the deceased was not married but left kindred, upon the majority of the adult children of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the child who represents to be the sole surviving child or the children who represent to constitute a majority of the surviving children;
  - d. The surviving parent or parents of the decedent, each having equal authority;
  - e. The adult sibling or the majority of the adult siblings of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the sibling who represents to be the sole surviving sibling or the siblings who represent to constitute a majority of the surviving siblings;
  - f. The adult grandchild or the majority of the adult grandchildren of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a grandchild who represents to be the only grandchild reasonably available to control final disposition of the decedent's remains or the grandchildren who

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<sup>96</sup> Section 23-06-03 was also amended by section 17 of Senate Bill No. 2124, chapter 391.

- represent to constitute a majority of grandchildren reasonably available to control final disposition of the decedent's remains;
- g. The grandparent or the grandparents of the decedent, each having equal authority;
  - h. The adult nieces and nephews of the decedent or a majority of the adult nieces and nephews; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a niece or nephew, who represents to be the only niece or nephew reasonably available to control final disposition of the decedent's remains or the nieces and nephews who represent to constitute a majority of the nieces and nephews reasonably available to control final disposition of the decedent's remains;
  - i. An individual who was acting as the guardian of the decedent with authority to make health care decisions for the decedent at the time of death;
  - j. An adult who exhibited special care and concern for the decedent;
  - k. An individual respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; or
  - l. The appropriate public or court authority, as required by law. For purposes of this subdivision, the appropriate public or court authority includes the county social service board of the county in which the death occurred if the individual dies without apparent financial means to provide for final disposition or the district court in the county in which the death occurred.
2. If there is only one individual in a degree of relationship to the decedent described in subsection 1, and a district court determines the person and the decedent were estranged at the time of death, the right to control and the duty of disposition devolves to the next degree of relationship under subsection 1. For purposes of this subsection, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.
  3. If an individual to whom the right to control and duty of disposition devolves under subsection 1, refuses to accept or declines to act upon the right or duty, that right and duty passes as follows:
    - a. To another individual with the same degree of relationship to the decedent as the individual refusing to accept or declining to act; or
    - b. To the individual in the next degree of relationship to the decedent under subsection 1.
  4. If a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the mortician or funeral director may file a petition in the district court in the county of residence of the decedent requesting the court make a determination in the matter. If the right to control and duty of disposition devolves to more than one individual with the same degree of relationship to the decedent and those individuals do not, by majority vote, make a decision regarding arrangements and final disposition and a district

court has been petitioned to make a determination, the court shall consider the following factors in making a determination:

- a. The reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;
  - b. The degree of the personal relationship between the decedent and each of the individuals in the same degree of relationship to the decedent;
  - c. The expressed wishes and directions of the decedent and the extent to which the decedent provided resources for the purpose of carrying out the wishes or directions; and
  - d. The degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.
5. If the individual who has the duty of final disposition does not arrange for final disposition of the body within the time required by this chapter, the individual next specified shall bury or otherwise dispose of the body within the requirements of this chapter.
6. a. If the deceased did not leave sufficient means to pay for expenses of final disposition, including the cost of a casket, and is not survived by an individual described by subsection 1 and identified for financial responsibility within the county's general assistance policy, within fifteen days of application for services 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, within fifteen days of application for assistance the county social service board of the county in which the death occurs shall employ a person to arrange for and supervise the final disposition. If the deceased was a resident or inmate of a public institution, within fifteen days of application for assistance 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 final disposition.
- b. 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.
- c. The county social services board may provide for the use of a military casket or urn, if the deceased was a veteran as defined in section 37-01-40, unless the additional cost exceeds the negotiated expenses of this section or a surviving spouse or the nearest of kin of the deceased elects a nonmilitary casket.
- d. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners. The county social service board may not decrease the county payment due to a nominal amount left by the deceased or contributed by kin or any other party to defray the expenses of burial or cremation. Funds adequate to allow for burial instead of cremation are considered nominal under this section.



7. If the individual with the duty of final disposition under this section, or the personal representative of the decedent's estate, if any, is aware of the decedent's instructions regarding the disposition of the remains, that person shall honor those instructions, to the extent reasonable and possible, to the extent the instructions do not impose an economic or emotional hardship. A decedent's instructions may be reflected in a variety of methods, including pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract, a health care directive, a durable power of attorney for health care, a power of attorney, a will, a document created under section 23-06-31, or a document of gift for an anatomical gift.
8. If the decedent died while serving in any branch of the United States armed forces, the United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481 section (a)(1) through (8) as effective through December 2001, and completed a United States department of defense record of emergency data, DD form 93, or its successor form or its equivalent branch's form, the duty to bury or cremate the decedent or to provide other funeral and disposition arrangements for the decedent devolves on the person authorized by the decedent pursuant to that form.
9. A funeral director or mortician has complete authority to control the final disposition and to proceed under this chapter to recover reasonable charges for the final disposition if:
  - a. The funeral director or mortician has actual knowledge none of the individuals described in subsection 1 exist, can be found after reasonable inquiry, or can be contacted by reasonable means; and
  - b. Within thirty-six hours after having been given written notice of the facts, the appropriate court or public authority fails to assume responsibility for disposition of the remains. Written notice may be delivered by hand, United States mail, or facsimile transmission.

**SECTION 2. AMENDMENT.** Section 23-06-31 of the North Dakota Century Code is amended and reenacted as follows:

**23-06-31. Cremation or other lawful disposition of a body - Authorization document - Immunity.**

1. A legally competent adult may prepare a written statement directing the cremation or other lawful disposition of that adult's own remains pursuant to section 23-06-03. The written statement must be signed and dated by the legally competent adult and may be part of the legally competent adult's will.
2. A document that conforms to this section authorizes a crematorium or funeral establishment to carry out the instructions of the legally competent adult who is the subject of the document. It is not necessary for a crematorium or funeral establishment to obtain the consent or concurrence of any other person when the crematorium or funeral establishment cremates or otherwise provides for the lawful disposition of a body pursuant to instructions contained in a document that conforms to this section.
3. This section does not mandate that a crematorium or funeral establishment cremate or otherwise provide for the lawful disposition of a body pursuant to the document unless the legally competent adult who executed the document

articulated and funded in a pre-need funeral service contract the legally competent adult's instructions as expressed in the document.

4. A crematorium or funeral establishment that cremates or otherwise provides for the lawful disposition of a body in good-faith reliance upon instructions of a decedent or an individual to whom the crematorium or funeral establishment reasonably believes is entitled to control final disposition pursuant to section 23-06-03 or on an apparently genuine document executed pursuant to this section is not subject to criminal prosecution, civil liability, or professional discipline. The decision of a crematorium or funeral establishment to cremate or otherwise provide for the lawful disposition of a body in reliance on a document executed pursuant to this section is presumed to be made in good faith.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 208

### HOUSE BILL NO. 1355

(Representatives Kreidt, Bellew, Devlin, Meier, Rohr, Tveit)  
(Senators Anderson, O. Larsen, J. Lee)

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 basic care and nursing facility bed capacity.

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

**SECTION 1. AMENDMENT.** Section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-09.3-01.1. Moratorium on expansion of basic care bed capacity.**

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2017~~2019, and July 31, ~~2019~~2021, except ~~when~~if:
  - a. A nursing facility converts nursing facility beds to basic care;
  - b. An entity licenses bed capacity transferred as basic care bed capacity under section 23-16-01.1;
  - c. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile [80.47-kilometer] radius have been occupied at ninety percent or more for the previous twelve months. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to any participation program established by the department of human services for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or
  - d. The state department of health and the department of human services grant approval of new basic care beds to an entity. The approved entity shall license the beds within forty-eight months from the date of approval.
2. Transfers of basic care beds from one basic care facility to another entity is permitted. Transferred basic care beds must become licensed within ~~forty-eight~~seventy-two months of transfer. The entity receiving the transferred beds or any new facility may seek to participate in the basic care assistance program. If the entity can demonstrate that individuals can be cared for at a more independent level and that this service will delay entry into the nursing facility, the entity may be approved for basic care assistance funds.
3. If an Indian tribe acquires basic care beds, the tribal facility must meet state licensing requirements for those beds within ~~forty-eight~~seventy-two months of acquisition. A tribal facility may seek to participate 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.

**SECTION 2. AMENDMENT.** Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-16-01.1. Moratorium on expansion of long-term care bed capacity.**

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds or relicenses nursing facility beds delicensed after July 31, 2011, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2017~~2019, and July 31, ~~2019~~2021. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert licensed basic care bed capacity back to nursing facility bed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than one time in a twelve-month period.
2. Transfer of licensed nursing facility bed capacity from a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. Transferred bed capacity must become licensed by an entity within ~~forty-eight~~seventy-two months of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the ~~forty-eight month~~seventy-two month period originally established at the time the nursing facility first transferred the licensed nursing facility bed capacity. The subsequent receiving entity must license the received bed capacity within the ~~forty-eight month~~seventy-two month period originally established at the time of the first transfer.
3. A nursing facility may convert licensed nursing facility bed capacity to basic care. If the converted beds remain in the same facility and are not transferred, the beds may revert to nursing facility status after one year of licensure as basic care beds.
4. Nursing facility beds that are converted to basic care may be transferred as basic care beds. However, upon the transfer, the basic care beds may not be relicensed as nursing facility beds.
5. If an Indian tribe acquires nursing facility beds, the tribal facility must meet state licensing requirements for those beds within ~~forty-eight~~seventy-two months of acquisition. A tribal facility may seek to participate in the medical assistance programs. 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.
6. A nursing facility, upon prior written notice to the state department of health, may delicense a maximum of twenty-five percent of its licensed nursing facility bed capacity and have the delicensed nursing facility held for a period of ~~twenty-four~~forty-eight months. The total delicensed nursing facility bed capacity that may be held for a nursing facility at no time may be greater than

fifty percent of the number of currently licensed beds in the nursing facility. Delicensed nursing facility bed capacity in excess of fifty percent of the nursing facility's licensed capacity may not be held and is not eligible for the provisions of subsection 7. Delicensed bed capacity not sold or relicensed at the conclusion of the ~~twenty-four-month~~forty-eight-month holding period ceases to exist.

7. During the ~~twenty-four-month~~forty-eight-month holding period established at the time of delicensure, delicensed nursing facility bed capacity that is being held for the nursing facility may be:
  - a. Relicensed by the nursing facility. Relicensing of nursing facility bed capacity may not occur for twelve months from the time of delicensure.
  - b. Transferred to another entity as nursing facility bed capacity or basic care bed capacity. The receiving entity must license the transferred bed capacity as the type of bed capacity transferred within the ~~forty-eight-month~~seventy-two-month period originally established at the time of ~~delicensure~~transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the ~~forty-eight-month~~seventy-two-month period originally established at the time of ~~delicensure~~transfer. The subsequent receiving entity must license the received bed capacity within the ~~forty-eight-month~~seventy-two-month period originally established at the time of ~~delicensure~~transfer.
  - c. Licensed as basic care beds by the same facility. If the licensed basic care beds remain in the same facility and are not transferred, the beds may be reverted to licensed nursing facility bed capacity after twelve months.
8. Notwithstanding any other provision of this section, a nursing facility bed transferred before July 1, 2019, must be relicensed by the receiving entity within a seventy-two-month period established at the time of transfer.
9. Notwithstanding any other provision of this section, a nursing facility bed in the layaway program before July 1, 2019, may remain in the program for forty-eight months from the time the bed was first laid away.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 209

### HOUSE BILL NO. 1126

(Representative Weisz)  
(Senator J. Lee)

AN ACT to amend and reenact section 23-09.3-08.1 of the North Dakota Century Code, relating to basic care facility end-of-life services.

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

**SECTION 1. AMENDMENT.** Section 23-09.3-08.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-09.3-08.1. Admission of residents to basic care facility - Restrictions - Exception.**

1. A basic care facility may not admit and retain only an individual for whom unless the facility:
  - a. Facility provides, directly or through contract, appropriate services within the facility to attain or maintain the individual at the individual's highest practicable level of functioning. ~~A basic care facility may admit or retain only an individual whose condition; and~~
  - b. Condition and abilities of that individual are consistent with the national fire protection association 101 life safety code requirements.
2. Notwithstanding contrary provisions in subsection 1, a basic care facility may retain an individual in need of end-of-life services if the facility wraps around the individual's family, or the individual's designee, volunteers, or staff services to support the individual through end of life. The facility, individual, or the individual's designee may contract with a person or hospice agency to meet the needs of the individual. A basic care facility continues to be responsible for the care and services of every resident.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 210

### HOUSE BILL NO. 1433

(Representatives Kasper, Becker, B. Koppelman, Rohr, Strinden, Vigesaa)  
(Senators Clemens, Davison, Dever, J. Lee, Oehlke)

AN ACT to create and enact a new section to chapter 23-16 and a new section to chapter 26.1-47 of the North Dakota Century Code, relating to maintenance of certification for physicians; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

#### **Maintenance of certification.**

1. As used in this section:
  - a. "Continuing medical education" means continued postgraduate medical education required by the North Dakota board of medicine intended to educate medical professionals about new developments in the medical field.
  - b. "Maintenance of certification" means a process requiring periodic recertification examinations or other activities to maintain specialty medical board certification. Recertification may be provided by a medical professional organization, such as one or more of the medical specialty boards of the American board of medical specialties, the American osteopathic association, the national board of physicians and surgeons, or any other board a credentialing entity recognizes.
  - c. "Physician" means a physician licensed under chapter 43-17.
  - d. "Specialty medical board certification" means certification by a board specializing in one particular area of medicine and having requirements in addition to those the North Dakota board of medicine requires to practice medicine.
2. Except as provided in subsection 5, a physician may not be denied staff privileges or employment by a facility licensed under this chapter based solely on the physician's decision to not participate in maintenance of certification.
3. This section does not prevent a facility's credentialing committee from requiring a physician meet continuing medical education requirements as set by the physician's licensing board.
4. This section does not prohibit a facility licensed under this chapter from requiring a physician to undergo remedial or corrective courses or training as may be required by a quality improvement committee.

5. A facility licensed under this chapter may differentiate between physicians based on a physician's maintenance of certification if:
  - a. The facility's designation, certification, or accreditation is contingent on the facility requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the facility and the differentiation is limited to those physicians whose maintenance of certification is required for the facility's designation, certification, or accreditation; or
  - b. The voting physician members of the facility's organized medical staff vote to authorize the differentiation and the facility's governing body approves the vote.
    - (1) The facility may establish terms applicable to the facility's differentiation, including appropriate grandfathering provisions, and allowing the differentiation to be rescinded at any time by a vote of the voting physician members of the facility's organized medical staff.
    - (2) This section may not be construed to require a new vote by the facility's medical staff.
    - (3) Notwithstanding paragraph 2, this section may not be construed to abrogate or supersede the ability of an organized medical staff and governing board of an individual facility to determine the facility's credentialing and privileging criteria with respect to board certification and the maintenance of certification requirements.
6. A facility licensed under this chapter may not consider maintenance of certification participation or status as a standard of care consideration in the course of a quality improvement assessment.

**SECTION 2.** A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

**Maintenance of certification.**

1. As used in this section, the terms "continuing medical education", "maintenance of certification", "physician", and "specialty medical board certification" have the same meaning as provided under section 1 of this Act.
2. A health care insurer may not deny reimbursement to or prevent a physician from being a preferred provider based solely on a physician's decision to not participate in maintenance of certification, including basing a physician's network participation on any form of maintenance of certification participation or status.
3. A health care insurer may not discriminate with respect to reimbursement levels based solely on a physician's decision to not participate in any form of maintenance of certification.

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

Approved March 13, 2019

Filed March 14, 2019



## CHAPTER 211

### HOUSE BILL NO. 1337

(Representatives Heinert, Guggisberg, Meier, Porter)  
(Senators Burckhard, Dever, Meyer)

AN ACT to create and enact chapter 23-27.1 of the North Dakota Century Code, relating to the emergency medical services personnel licensure interstate compact.

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

**SECTION 1.** Chapter 23-27.1 of the North Dakota Century Code is created and enacted as follows:

##### **23-27.1-01. Purpose.**

To protect the public through verification of competency and ensure accountability for patient care-related activities all states license emergency medical services personnel, such as emergency medical technicians, advanced emergency medical technicians, and paramedics. This compact is intended to facilitate the day-to-day movement of emergency medical services personnel across state boundaries in the performance of their emergency medical services duties as assigned by an appropriate authority and authorize state emergency medical services offices to afford immediate legal recognition to emergency medical services personnel licensed in a member state. This compact recognizes states have a vested interest in protecting the public's health and safety through their licensing and regulation of emergency medical services personnel and state regulation shared among the member states will best protect public health and safety. This compact is designed to achieve the following purposes and objectives:

1. Increase public access to emergency medical services personnel;
2. Enhance the states' ability to protect the public's health and safety, especially patient safety;
3. Encourage the cooperation of member states in the areas of emergency medical services personnel licensure and regulation;
4. Support licensing of military members who are separating from an active duty tour and their spouses;
5. Facilitate the exchange of information between member states regarding emergency medical services personnel licensure, adverse action, and significant investigatory information;
6. Promote compliance with the laws governing emergency medical services personnel practice in each member state; and
7. Invest all member states with the authority to hold emergency medical services personnel accountable through the mutual recognition of member state licenses.

**23-27.1-02. Definitions.****In this chapter:**

1. "Advanced emergency medical technician" means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the national emergency medical services education standards and national emergency medical services scope of practice model.
2. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by law which may be imposed against licensed emergency medical services personnel by a state emergency medical services authority or state court, including actions against an individual's license such as revocation, suspension, probation, consent agreement, monitoring, or other limitation or encumbrance on the individual's practice, letters of reprimand or admonition, fines, criminal convictions, and state court judgments enforcing adverse actions by the state emergency medical services authority.
3. "Alternative program" means a voluntary, nondisciplinary substance abuse recovery program approved by a state emergency medical services authority.
4. "Certification" means the successful verification of entry-level cognitive and psychomotor competency using a reliable, validated, and legally defensible examination.
5. "Commission" means the national administrative body of which all states that have enacted the compact are members.
6. "Emergency medical technician" means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the national emergency medical services education standards and national emergency medical services scope of practice model.
7. "Home state" means a member state where an individual is licensed to practice emergency medical services.
8. "License" means the authorization by a state for an individual to practice as an emergency medical technician, advanced emergency medical technician, paramedic, or a level in between an emergency medical technician and paramedic.
9. "Medical director" means a physician licensed in a member state who is accountable for the care delivered by emergency medical services personnel.
10. "Member state" means a state that has enacted this compact.
11. "Paramedic" means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the national emergency medical services education standards and national emergency medical services scope of practice model.
12. "Privilege to practice" means an individual's authority to deliver emergency medical services in remote states as authorized under this compact.
13. "Remote state" means a member state in which an individual is not licensed.

14. "Restricted" means the outcome of an adverse action that limits a license or the privilege to practice.
15. "Rule" means a written statement by the interstate commission promulgated pursuant to section 23-27.1-12 which is of general applicability; implements, interprets, or prescribes a policy or provision of the compact; or is an organizational, procedural, or practice requirement of the commission and has the force and effect of statutory law in a member state and includes the amendment, repeal, or suspension of an existing rule.
16. "Scope of practice" means defined parameters of various duties or services that may be provided by an individual with specific credentials. Whether regulated by rule, statute, or court decision, it tends to represent the limits of services an individual may perform.
17. "Significant investigatory information" means:
  - a. Investigative information that a state emergency medical services authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proved true, would result in the imposition of an adverse action on a license or privilege to practice; or
  - b. Investigative information that indicates an individual represents an immediate threat to public health and safety regardless of whether the individual has been notified and had an opportunity to respond.
18. "State" means any state, commonwealth, district, or territory of the United States.
19. "State emergency medical services authority" means the board, office, or other agency with the legislative mandate to license emergency medical services personnel.

### **23-27.1-03. Home state licensure.**

1. Any member state in which an individual holds a current license is deemed a home state for purposes of this compact.
2. Any member state may require an individual to obtain and retain a license to be authorized to practice in the member state under circumstances not authorized by the privilege to practice under the terms of this compact.
3. A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:
  - a. Currently requires the use of the national registry of emergency medical technicians examination as a condition of issuing initial licenses at the emergency medical technician and paramedic levels;
  - b. Has a mechanism in place for receiving and investigating complaints about individuals;
  - c. Notifies the commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding an individual;

- d. No later than five years after activation of the compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the federal bureau of investigation with the exception of federal employees who have suitability determination in accordance with title 5, Code of Federal Regulations, section 731, part 202 and submit documentation of such as promulgated in the rules of the commission; and
- e. Complies with the rules of the commission.

#### **23-27.1-04. Compact privilege to practice.**

1. Member states shall recognize the privilege to practice of an individual licensed in another member state that is in conformance with section 23-27.1-03.
2. To exercise the privilege to practice under the terms and provisions of this compact, an individual must:
  - a. Be at least 18 years of age;
  - b. Possess a current unrestricted license in a member state as an emergency medical technician, advanced emergency medical technician, paramedic, or state recognized and licensed level with a scope of practice and authority between emergency medical technician and paramedic; and
  - c. Practice under the supervision of a medical director.
3. An individual providing patient care in a remote state under the privilege to practice shall function within the scope of practice authorized by the home state unless and until modified by an appropriate authority in the remote state as may be defined in the rules of the commission.
4. Except as provided in subsection 3, an individual practicing in a remote state is subject to the remote state's authority and laws. A remote state may, in accordance with due process and that state's laws, restrict, suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action, that remote state shall promptly notify the home state and the commission.
5. If an individual's license in any home state is restricted or suspended, the individual is not eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.
6. If an individual's privilege to practice in any remote state is restricted, suspended, or revoked, the individual is not eligible to practice in any remote state until the individual's privilege to practice is restored.

#### **23-27.1-05. Conditions of practice in a remote state.**

An individual may practice in a remote state under a privilege to practice only in the performance of the individual's emergency medical services duties as assigned by an appropriate authority, as defined in the rules of the commission, and under the following circumstances:

1. The individual originates a patient transport in a home state and transports the patient to a remote state;
2. The individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;
3. The individual enters a remote state to provide patient care or transport within that remote state;
4. The individual enters a remote state to pick up a patient and provide care and transport to a third member state; and
5. Other conditions as determined by rules promulgated by the commission.

#### **23-27.1-06. Relationship to emergency management assistance compact.**

Upon a member state's governor's declaration of a state of emergency or disaster that activates the emergency management assistance compact, all relevant terms and provisions of the emergency management assistance compact apply and to the extent any terms or provisions of this compact conflict with the emergency management assistance compact, the terms of the emergency management assistance compact prevails with respect to any individual practicing in the remote state in response to such declaration.

#### **23-27.1-07. Veterans, service members separating from active duty military, and their spouses.**

1. Member states shall consider a veteran, active military service member, and member of the national guard and reserves separating from an active duty tour, and a spouse thereof, who holds a current valid and unrestricted national registry of emergency medical technicians certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure.
2. Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the national guard and reserves separating from an active duty tour, and their spouses.
3. All individuals functioning with a privilege to practice under this section remain subject to the adverse actions provisions of section 23-27.1-08.

#### **23-27.1-08. Adverse actions.**

1. A home state shall have exclusive power to impose adverse action against an individual's license issued by the home state.
2. If an individual's license in any home state is restricted or suspended, the individual is not eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.
  - a. All home state adverse action orders must include a statement that the individual's compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from both the home state and remote state's emergency medical services authority.

- b. An individual currently subject to adverse action in the home state may not practice in any remote state without prior written authorization from both the home state and remote state's emergency medical services authority.
3. A member state shall report adverse actions and any occurrences that the individual's compact privileges are restricted, suspended, or revoked to the commission in accordance with the rules of the commission.
4. A remote state may take adverse action on an individual's privilege to practice within that state.
5. Any member state may take adverse action against an individual's privilege to practice in the member state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action.
6. A home state's emergency medical services authority shall investigate and take appropriate action with respect to reported conduct in a remote state as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.
7. Nothing in this compact may override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation must remain nonpublic if required by the member state's laws. Member states must require individuals who enter any alternative programs to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

**23-27.1-09. Additional powers invested in a member state's emergency medical services authority.**

A member state's emergency medical services authority, in addition to any other powers granted under state law, is authorized under this compact to:

1. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a member state's emergency medical services authority for the attendance and testimony of witnesses or the production of evidence from another member state, or both, must be enforced in the remote state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state's emergency medical services authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence, or both, are located; and
2. Issue cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

**23-27.1-10. Establishment of the interstate commission for emergency medical services personnel practice.**

1. The compact states hereby create and establish a joint public agency known as the interstate commission for emergency medical services personnel practice.

- a. The commission is a body politic and an instrumentality of the compact states.
  - b. Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
  - c. Nothing in this compact may be construed to be a waiver of sovereign immunity.
2. a. Each member state shall have and be limited to one delegate. The responsible official of the state emergency medical services authority or the official's designee shall be the delegate to this compact for each member state. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the member state in which the vacancy exists. If more than one board, office, or other agency with the legislative mandate to license emergency medical services personnel at and above the level of emergency medical technician exists, the governor of the state shall determine which entity is responsible for assigning the delegate.
  - b. Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
  - c. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
  - d. All meetings must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in section 23-27.1-12.
  - e. The commission may convene in a closed, nonpublic meeting if the commission must discuss:
    - (1) Noncompliance of a member state with its obligations under the compact;
    - (2) The employment, compensation, discipline, or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;
    - (3) Current, threatened, or reasonably anticipated litigation;
    - (4) Negotiation of contracts for the purchase or sale of goods, services, or real estate;
    - (5) Accusing any person of a crime or formally censuring any person;

- (6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
  - (7) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - (8) Disclosure of investigatory records compiled for law enforcement purposes;
  - (9) Disclosure of information related to any investigatory reports prepared by, on behalf of, or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or
  - (10) Matters specifically exempted from disclosure by a federal or member state statute.
- f. If a meeting, or portion of a meeting, is closed under this section, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.
3. The commission shall, by a majority vote of the delegates, prescribe bylaws or rules, or both, to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including:
- a. Establishing the fiscal year of the commission;
  - b. Providing reasonable standards and procedures:
    - (1) For the establishment and meetings of other committees; and
    - (2) Governing any general or specific delegation of any authority or function of the commission;
  - c. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the membership votes to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting, which includes the vote of each member with no proxy votes allowed;
  - d. Establishing the titles, duties and authority, and reasonable procedures for the election of the officers of the commission;



- e. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any member state, the bylaws exclusively govern the personnel policies and programs of the commission;
  - f. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;
  - g. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving of all of its debts and obligations;
  - h. The commission shall publish its bylaws and file a copy thereof, and a copy of any amendment, with the appropriate agency or officer in each of the member states, if any;
  - i. The commission shall maintain its financial records in accordance with the bylaws; and
  - j. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
4. The commission shall have the following powers:
- a. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all member states;
  - b. To bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state emergency medical services authority or other regulatory body responsible for emergency medical services personnel licensure to sue or be sued under applicable law may not be affected;
  - c. To purchase and maintain insurance and bonds;
  - d. To borrow, accept, or contract for services of personnel, including employees of a member state;
  - e. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
  - f. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety or conflict of interest;
  - g. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal, or

- mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;
- h. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;
  - i. To establish a budget and make expenditures;
  - j. To borrow money;
  - k. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and other interested persons as may be designated in this compact and the bylaws;
  - l. To provide and receive information from, and to cooperate with, law enforcement agencies;
  - m. To adopt and use an official seal; and
  - n. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of emergency medical services personnel licensure and practice.
5. a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
- b. The commission may accept appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
- c. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.
- d. The commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.
- e. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.
6. a. The members, officers, executive director, employees and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or

- personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. This subdivision may not be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.
- b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein may be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.
  - c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

### **23-27.1-11. Coordinated database.**

1. The commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure, adverse action, and significant investigatory information on all licensed individuals in member states.
2. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the coordinated database on all individuals to whom this compact is applicable as required by the rules of the commission, including:
  - a. Identifying information;
  - b. Licensure data;
  - c. Significant investigatory information;
  - d. Adverse actions against an individual's license;
  - e. An indicator that an individual's privilege to practice is restricted, suspended, or revoked;
  - f. Nonconfidential information related to alternative program participation;
  - g. Any denial of application for licensure, and the reason for such denial; and

- h. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.
- 3. The coordinated database administrator shall promptly notify all member states of any adverse action taken against, or significant investigative information on, any individual in a member state.
- 4. Member states contributing information to the coordinated database may designate information that may not be shared with the public without the express permission of the contributing state.
- 5. Any information submitted to the coordinated database that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the coordinated database.

### **23-27.1-12. Rulemaking.**

- 1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments are binding as of the date specified in each rule or amendment.
- 2. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule has no further force and effect in any member state.
- 3. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
- 4. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
  - a. On the website of the commission; and
  - b. On the website of each member state emergency medical services authority or the publication in which each state would otherwise publish proposed rules.
- 5. The notice of proposed rulemaking must include:
  - a. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
  - b. The text of the proposed rule or amendment and the reason for the proposed rule;
  - c. A request for comments on the proposed rule from any interested person; and
  - d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

6. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
7. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:
  - a. At least twenty-five persons;
  - b. A governmental subdivision or agency; or
  - c. An association having at least twenty-five members.
8. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing.
  - a. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.
  - b. Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
  - c. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This section does not preclude the commission from making a transcript or recording of the hearing if it so chooses.
  - d. Nothing in this section may be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
9. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
10. The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
11. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.
12. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided the usual rulemaking procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

- a. Meet an imminent threat to public health, safety, or welfare;
  - b. Prevent a loss of commission or member state funds;
  - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
  - d. Protect public health and safety.
13. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission before the end of the notice period. If a challenge is not made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

### **23-27.1-13. Oversight, dispute resolution, and enforcement.**

1. a. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder have standing as statutory law.
  - b. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.
  - c. The commission is entitled to receive service of process in any such proceeding, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.
2. a. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
    - (1) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and
    - (2) Provide remedial training and specific technical assistance regarding the default.
  - b. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of

- the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
- c. Termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.
  - d. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
  - e. The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.
  - f. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.
3. a. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.
- b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.
4. a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
- b. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.
- c. The remedies herein are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

**23-27.1-14. Date of implementation of the interstate commission for emergency medical services personnel practice and associated rules, withdrawal, and amendment.**

1. The compact becomes effective on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, are limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the

commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

2. Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.
3. Any member state may withdraw from this compact by enacting a statute repealing the same.
  - a. A member state's withdrawal may not take effect until six months after enactment of the repealing statute.
  - b. Withdrawal may not affect the continuing requirement of the withdrawing state's emergency medical services authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.
4. Nothing contained in this compact may be construed to invalidate or prevent any emergency medical services personnel licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.
5. This compact may be amended by the member states. No amendment to this compact may become effective and binding upon any member state until it is enacted into the laws of all member states.

### **23-27.1-15. Construction and severability.**

This compact shall be liberally construed so as to effectuate the purposes thereof. If this compact is held to be contrary to the constitution of any state member thereto, the compact shall remain in full force and effect as to the remaining member states. Nothing in this compact supersedes state law or rules related to licensure of emergency medical services agencies.

Approved March 28, 2019

Filed March 29, 2019



## CHAPTER 212

### SENATE BILL NO. 2092

(Agriculture Committee)  
(At the request of the Department of Health)

AN ACT to amend and reenact sections 23-36-01, 23-36-03, 23-36-05, 23-36-06, and 23-36-08 of the North Dakota Century Code, relating to rabies control.

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

**SECTION 1. AMENDMENT.** Section 23-36-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-36-01. Definitions.**

As used in this chapter:

1. "Bite" means any penetration of the skin by an animal's teeth.
2. "Clinical ~~symptoms~~signs of rabies" means physical signs ~~or symptoms~~ or animal behavior that would lead a reasonably prudent veterinarian to ~~conclude that a diagnosis of possible~~suspect an infection of rabies and the pursuit of a rabies diagnosis is indicated.
3. "Confinement" means separation of an animal from humans, other than the owner, caretaker, a member of the owner's family, or the caretaker's employees, and from other animals, by means of a building, cage, fence, pen, or other secure enclosure that restricts the animal's movement within definite boundaries and prevents the animal from exiting the enclosure.
4. "Department" means the state department of health.
5. "Domestic animal" means any dog [*canis familiaris*], cat [*felis domestica*], horse, mule, bovine animal, sheep, goat, bison, llama, alpaca, swine, or captive-bred, ~~currently vaccinated~~ ferret.
6. "Emergency" means a situation in which an immediate search and seizure of an animal is necessary and authorized by section 8 of article I of the Constitution of North Dakota and the fourth amendment to the Constitution of the United States because of a risk of death or serious bodily injury to a human or another animal.
7. "Euthanasia" means the use of humane techniques to induce the most rapid, painless, and distress-free death possible in an animal.
8. "Exposure to rabies" means any bite or scratch, and includes any nonbite contact ~~of an individual~~ with an animal, animal tissue, or fluids ~~that are~~which is defined as an exposure to rabies by the federal advisory committee on immunization practices referred to in Public Law No. 103-66 [107 Stat. 636, 642; 42 U.S.C. 1396s(e)].

- ~~8-9.~~ "Impound" means quarantining an animal at a public pound or an animal facility of a licensed veterinarian.
- ~~9-10.~~ "Law enforcement officer" has the meaning of that term as set forth in section 12.1-01-04.
- ~~10-11.~~ "Quarantine" means confinement in a fixed area that keeps a ~~possibly rabid~~exposed animal secure and ~~isolated~~segregated from all other animals ~~and individuals~~ so there is no reasonable possibility of rabies being mechanically transmitted from the confined area.
- ~~11-12.~~ "Vaccinated animal" means an animal that has been vaccinated in compliance with the 2016 compendium of animal rabies control issued by the national association of state public health veterinarians.
- ~~12-13.~~ "Suspect rabies exposure" means an animal bitten or otherwise exposed to a wild carnivore, skunk, bat, or an animal, as determined by a veterinarian, which may have been exhibiting signs of rabies, and a rabies exposure could not be ruled out through laboratory testing.
14. "Wild ~~mammal~~animal" means any animal of the ~~order~~class mammalia which is not a domestic animal and includes any hybrid of a domestic animal and a ~~mammal~~wild animal regardless of whether the animal is:
- Wildlife as defined in section 20.1-01-02; or
  - Held in private ownership.

**SECTION 2. AMENDMENT.** Section 23-36-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-36-03. Enforcement authority.**

- The department, or an agency acting on the department's behalf, may promptly seize and ~~humanely kill~~euthanize, impound at the owner's expense, or quarantine any animal if the state health officer, or the state health officer's designee, has probable cause to believe the animal presents clinical ~~symptom~~signs of rabies.
- The department, or an agency acting on the department's behalf, may promptly seize and ~~humanely kill~~euthanize, impound at the owner's expense, or quarantine any ~~wild mammal that is not currently vaccinated for rabies by a vaccine approved for use on that species by the national association of state public health veterinarians, inc., or any stray or unwanted domestic~~wild animal; if the state health officer, or the state health officer's designee, determines the animal is a threat to human life or safety due to the possible exposure of another animal or an individual to rabies.
- ~~The department, or an agency acting on the department's behalf, may promptly seize and quarantine, or impound at the owner's expense, any dog, cat, or currently vaccinated ferret for a period of ten days, or any other domestic animal for a period not exceeding six months, if the state health officer, or the state health officer's designee, determines the animal is a threat to human life or safety due to the possible exposure of an individual to rabies. For domestic animals, the department may seize and quarantine or confine and observe an animal if the animal has bitten or otherwise exposed~~

an individual or has been bitten or otherwise exposed to rabies or suspect rabies and the owner is unwilling or unable to comply with the department's recommendations. The department may seize and euthanize an animal if the animal has bitten or otherwise exposed an individual and is exhibiting signs of rabies, as diagnosed by a veterinarian. The department may seize, euthanize, or quarantine an animal if the animal was exposed to rabies or suspect rabies and never has been vaccinated against rabies and the owner is unwilling or unable to comply with the department's recommendations.

4. If an animal ~~had died or is humanely killed under this section~~ and there is a possible exposure of another animal or an individual to rabies, then at the request of the state health officer, or the state health officer's designee, the animal's brain must be tested for rabies by the ~~state microbiology laboratory of the department or by the North Dakota veterinary diagnostic laboratory.~~ The department may ~~conduct~~ seek a diagnosis of rabies for farm animals, domestic animals, and wildlife that are suspected of having rabies and report findings as appropriate.
5. If an animal that has bitten or otherwise exposed an individual or another animal is not seized for testing, a law enforcement officer with jurisdiction over the place where the animal is located may determine whether to impound or quarantine the animal under subsection ~~32~~ and which method of confinement to use.
6. A licensed veterinarian shall examine, at the owner's expense, a confined animal ~~on the first and last day of the animal's confinement and, at the request of the department or, a local public health unit, at any other time during confinement~~ or a law enforcement officer with jurisdiction over the place where the animal is located.

**SECTION 3. AMENDMENT.** Section 23-36-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-36-05. Assistance of state and local agencies.**

If a warrant is issued under section 23-36-04 and upon written request of the department, the game and fish department, the state veterinarian, or the wildlife services program of the United States department of agriculture animal and plant health inspection service shall provide assistance to the department in any action to seize, impound, quarantine, or test an animal suspected of having rabies or that has possibly exposed an individual to rabies or possibly has been exposed to rabies, and shall carry out any other preventive measures the department requests. For purposes of this section, a request from the department means only a request for assistance as to a particular and singular suspicion of exposure to rabies and does not constitute a continuous request for assistance.

The duty of the game and fish department to cooperate and provide assistance under this section is limited to cases involving a wild ~~mammal~~ animal and is applicable only if no other agency is available for law enforcement or animal control services.

**SECTION 4. AMENDMENT.** Section 23-36-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-36-06. Payment for postexposure treatment.**

The department may provide, at no cost, rabies postexposure ~~vaccinebiologics~~ to an individual possibly exposed to rabies if the department determines the individual is financially unable to pay for the postexposure ~~vaccinebiologics~~ treatment.

**SECTION 5. AMENDMENT.** Section 23-36-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-36-08. Limitation on liability.**

Subject to any other requirements of section 32-12.2-02, the owner of an animal may bring a claim for money damages, and may recover an amount up to the replacement value of the animal, if the owner establishes that before the animal was seized and tested for rabies under this chapter, the state health officer, or the state health officer's designee, knew or recklessly failed to determine that the animal, at the time of the exposure, was lawfully owned and licensed and that:

1. ~~The animal was a wild mammal, and, at the time of the exposure, was currently vaccinated with a vaccine approved for use on an animal of that species by the national association of state public health veterinarians, inc.;~~
2. The animal had not bitten, scratched, or otherwise possibly exposed a ~~person~~another animal or an individual to rabies; or
- ~~3.~~2. The animal was a domestic animal and there was not probable cause to believe the animal was rabid.

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 213

### HOUSE BILL NO. 1268

(Representatives Fegley, D. Anderson, Jones, J. Nelson)

AN ACT to amend and reenact sections 11-28.3-09 and 23-46-04 and subsection 10 of section 57-15-06.7 of the North Dakota Century Code, relating to property tax levies for emergency medical service and ambulance service operations financial assistance; and to provide for the distribution of state financial assistance for emergency medical services.

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

**SECTION 1. AMENDMENT.** Section 11-28.3-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **11-28.3-09. Emergency medical service policy - Levy - Financial report.**

1. The board of directors shall establish a general 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. In the year for which the levy is sought, a board of directors of a rural ambulance service district seeking approval of a property tax levy under this chapter must file with the county auditor of the counties within the rural ambulance service district, at a time and in a format prescribed by the county auditors, a financial report for the preceding calendar year showing the ending balances of each fund held by the rural ambulance service district during that year. The board or boards of county commissioners may levy a tax not to exceed the mill rate approved by the electors of the district under section 11-28.3-04, and in no event exceeding a mill rate of ~~ten~~fifteen mills upon the taxable property within the district for the maintenance of the rural ambulance service district for the fiscal year as provided by law. A rural ambulance service district may be dissolved by approval of electors of the district as provided in section 11-28.3-13.
2. The tax levied for a rural ambulance service district shall be:
  1. a. Collected as other taxes are collected in the county.
  2. b. 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. c. Deposited by the secretary-treasurer in a state or national bank in a district account.
  4. d. 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.

3. 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 emergency medical services sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent 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 emergency medical services sinking fund shall not exceed the amount of revenue that would be generated by application of the maximum mill levy approved by the electors.

**SECTION 2. AMENDMENT.** Section 23-46-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-46-04. State financial assistance for emergency medical services - Confidential information - Annual allocation.**

Emergency medical services operations that request financial assistance from the state must provide requested fiscal information to the state department of health for use in financial assistance determinations. All information provided to the department under this section is confidential. The state department of health shall determine annually the allocation amount of state financial assistance for each emergency medical services funding area based on the department's determination of:

1. ~~The the minimum annual funding necessary to operate the emergency medical services operation or service designated to operate in the ambulance funding area, based on the financial needs unique to each emergency medical services funding area.~~
2. ~~Required local matching funds commensurate with at least ten dollars per capita within the emergency medical services funding area.~~

<sup>97</sup> **SECTION 3. AMENDMENT.** Subsection 10 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

10. A county levying a tax for county emergency medical service according to section 57-15-50 may levy a tax not exceeding tenfifteen mills.

**SECTION 4. AMBULANCE SERVICE OPERATION FUNDING DISTRIBUTION.** Notwithstanding section 23-46-04, during the biennium beginning July 1, 2019, and ending June 30, 2021, the state department of health, in consultation with the emergency medical services advisory council, shall provide state financial assistance annually to each eligible ambulance service operation pursuant to the following formula calculation:

1. The budget for each operation must be determined by adding the amount of \$60,000, or other base amount established by the department, to the product of the operation's average number of runs for the two most recent fiscal years multiplied by the average cost of a run.

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<sup>97</sup> Section 57-15-06.7 was also amended by section 133 of Senate Bill No. 2124, chapter 391.

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2. The operation's grant amount must be determined by deducting the following amounts from the operation's budget calculated under subsection 1 of this section:
    - a. The product of the operation's average number of runs for the two most recent fiscal years multiplied by the average amount of reimbursement for a run; and
    - b. The product of the property tax valuation of the operations service area for the most recent taxable year multiplied by 5 mills.
  3. The department shall distribute a prorated share of the operation's calculated grant amount if legislative appropriations for state financial assistance for emergency medical services is not sufficient to provide full grant funding calculated under this section.
  4. An operation is not eligible to receive funding under this section if the operation's average number of runs for the two most recent fiscal years is more than 700.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 214

### SENATE BILL NO. 2154

(Senators Poolman, Dever, Hogan)  
(Representatives Beadle, Dobervich, Meier)

AN ACT to create and enact chapter 23-49 of the North Dakota Century Code, relating to hospital discharge policies.

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

**SECTION 1.** Chapter 23-49 of the North Dakota Century Code is created and enacted as follows:

##### **23-49-01. Definitions.**

As used in this chapter:

1. "Discharge" means the exit or release of a patient from inpatient care in a hospital to the residence of the patient.
2. "Informal caregiver" means an individual at least eighteen years of age who a patient, or the patient's legal representative, designates at admission as a lay caregiver, and who following the discharge of the patient is willing and able to perform posthospital care for the patient at the patient's residence.
3. "Posthospital care" means care directly related to a patient's condition at the time of discharge and which is provided by an informal caregiver to the patient in the patient's residence.
4. "Residence" means the dwelling a patient considers to be the patient's home. The term does not include a hospital or rehabilitation facility.

##### **23-49-02. Patient and caregiver discharge planning, involvement, and documentation.**

1. A hospital shall adopt and maintain a written discharge planning process, including policies and procedures, which applies to all patients.
2. At an early stage of hospitalization, a hospital shall identify patients who are likely to suffer adverse health consequences if discharged without adequate discharge planning. A hospital shall involve a patient throughout the discharge planning process. As appropriate, a hospital shall involve the patient's informal caregiver or legal representative in the discharge planning process. A hospital shall:
  - a. Document the patient's discharge plan in the patient's medical record.
  - b. As appropriate, communicate the plan to the patient, the patient's informal caregiver, or the patient's representative.



- c. Document the arrangements made for initial implementation of the patient's discharge plan in the patient's medical record, including any training or materials provided to the patient, the patient's informal caregiver, or the patient's representative.

**23-49-03. Posthospital care training.**

1. As appropriate, a hospital shall educate or train a patient, the patient's informal caregiver, or the patient's representative to prepare the patient for posthospital care.
2. The education or training provided by hospital staff to a patient, the patient's informal caregiver, or the patient's representative must be tailored to the patient's identified needs, including medications, treatment modalities, physical and occupational therapies, psychosocial needs, appointments, or other posthospital care.
3. Education and training provided by a hospital may include repeated review of the training and materials with a patient, the patient's informal caregiver, or the patient's representative.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 215

### SENATE BILL NO. 2196

(Senators Anderson, J. Lee)  
(Representative Tveit)

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to creation of a drug fatalities review panel.

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

**SECTION 1.** A new chapter to title 23 of the North Dakota Century Code is created and enacted as follows:

##### **Drug fatalities review panel.**

1. The forensic pathology department of the university of North Dakota school of medicine and health sciences shall appoint individuals to serve as members on the drug fatalities review panel. To encompass disciplines needed for evaluation and balance of members' viewpoints, panel membership must include representation from multiple disciplines and services. Membership may include a forensic pathologist, a pharmacist with knowledge in pharmacogenomics, representatives of rural and urban healthcare facilities, a licensed addiction counselor, a physician, and representatives of nonregulatory divisions of the state department of health and department of human services.
2. The state department of health and the university of North Dakota school of medicine and health sciences shall provide for or arrange for administrative services to assist the panel in performing official duties, including collection and management of case review files, the maintenance of records, data collection and analysis, and the issuance of a state report on drug-related fatalities. The department and the university of North Dakota school of medicine and health sciences are responsible for the confidentiality and security of data on the sharing site on which the documents are stored.

##### **Powers and duties.**

1. The panel may:
  - a. Provide outcome data on drug-related fatalities in the state as a basis for policy, intervention, and other program effectiveness.
  - b. Promote the identification of circumstances that may contribute to drug-related fatalities.
  - c. Promote the identification of public health issues related to drug-related fatalities.
  - d. Promote training for individuals and agencies that share a responsibility in responding to or preventing drug-related fatalities.

- e. Promote interagency communication for the management of pharmaceutical and nonpharmaceutical drug-related fatalities and for the management of future nonfatal cases.
  - f. Promote evaluation of the impact of specific drug-related fatality risk factors, including substance abuse, domestic violence, and behavioral or mental health issues.
  - g. Promote the use of intervention and education programs to prevent drug-related fatalities.
  - h. Provide data regarding use and potential expansion of drug-related rescue programs and referral services.
2. The panel shall review the deaths of individuals which are identified as prescription drug, illicit drug, or alcohol overdoses or which pertain to a trend or pattern of deaths identified as drug or alcohol overdoses. The panel shall prioritize the reviews conducted under this subsection. In conducting a review under this subsection, the panel:
- a. May utilize case-specific consultants on a case-by-case basis.
  - b. Shall identify factors that may have contributed to a preventable fatality, gaps in the system, and community areas of need.
  - c. Shall make recommendations or observations to identify whether a fatality was preventable, whether additional information is needed for a more complete review, whether it is appropriate to make a referral to an agency requesting services, and any systemic issues raised by the circumstances of the fatality.

### **Confidentiality.**

Notwithstanding section 44-04-19, all portions of a meeting of the panel which reviews drug fatalities are closed to the public. Notwithstanding section 44-04-18, all documentation and reports of the panel which are related to panel review of drug fatalities are confidential, except for the annual state report, which may not disclose personally identifiable information of decedents. The confidential records are not discoverable as evidence.

### **Access to records.**

Upon the written request of the presiding officer of the panel, a health care facility and health care provider shall disclose all patient records of the facility or provider which are requested by the panel and pertain to an identified drug fatality. The presiding officer may request records from the most recent thirty-six-month period.

### **State report.**

Annually the panel shall compile a state report of fatalities reviewed. The report must include identification of patterns, trends, and policy issues related to drug fatalities, but may not disclose personally identifiable information.

Approved April 8, 2019

Filed April 9, 2019

# ENVIRONMENTAL QUALITY

## CHAPTER 216

### SENATE BILL NO. 2109

(Energy and Natural Resources Committee)  
(At the request of the State Department of Health)

AN ACT to create and enact a new subsection to section 23.1-04-08 of the North Dakota Century Code, relating to the duties and responsibilities of the department of environmental quality; to amend and reenact section 23.1-01-11, subsection 6 of section 23.1-04-15, and section 23.1-08-10 of the North Dakota Century Code, relating to the duties and responsibilities of the department of environmental quality; to repeal section 23.1-06-03 and chapters 23.1-09 and 61-30 of the North Dakota Century Code, relating to the duties and responsibilities of the department of environmental quality; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23.1-01-11 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-01-11. Appeal from permit proceedings. (Contingent effective date - [See note](#))**

1. An appeal from the issuance, denial, modification, or revocation of a permit issued under chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's issuance, modification, or revocation of the permit or permit conditions must be made in the permit hearing process and may not be raised on any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

2. Notwithstanding subsection 1, the department may adopt any procedures governing appeals it determines are necessary and appropriate to develop, implement, or enforce a federally delegated, authorized, or approved program.

**SECTION 2.** A new subsection to section 23.1-04-08 of the North Dakota Century Code is created and enacted as follows:

Any facility required to have a permit under this section which was in existence on July 1, 1981, or the effective date of any statutory or regulatory change in the hazardous waste management which requires the facility to have a permit, and has made an application for a permit under this section, must be treated as having been issued the permit until the final administrative disposition of the application is made.

**SECTION 3. AMENDMENT.** Subsection 6 of section 23.1-04-15 of the North Dakota Century Code is amended and reenacted as follows:

6. An administrative action brought under this chapter must be conducted in accordance with ~~North Dakota Administrative Code article 33-22chapter 28-32.~~

**SECTION 4. AMENDMENT.** Section 23.1-08-10 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-08-10. Fees - Deposit in operating fund. (Contingent effective date - [See note](#))**

The department by rule may prescribe the payment and collection of reasonable fees to issue permits or registration certificates for registering, licensing, or permitting solid waste generators, transporters, and treatment, storage, recycling, or disposal facilities. The fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit licensing or registration fees must be deposited in the department operating fund in the state treasury, and any expenditures from the fund are subject to appropriation by the legislative assembly. Applicants for special ~~use~~waste solid waste management facilities shall submit a minimum fee as follows:

1. Twenty thousand dollars for any facility that receives on average one hundred tons [90718 kilograms] or more per day.
2. Ten thousand dollars for any facility which receives on average more than ten tons [9071.80 kilograms] but less than one hundred tons [90718 kilograms] per day.

**SECTION 5. REPEAL.** Section 23.1-06-03 and chapters 23.1-09 and 61-30 of the North Dakota Century Code are repealed.

**SECTION 6. EFFECTIVE DATE.** This Act is effective upon filing with the secretary of state, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received before filing with the secretary of state, this Act is effective on the date certification is received.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 217

### SENATE BILL NO. 2107

(Energy and Natural Resources Committee)  
(At the request of the State Department of Health)

AN ACT to create and enact a new section to chapter 23.1-01 of the North Dakota Century Code, relating to the certification of environmental laboratories; to repeal section 61-28.1-07 of the North Dakota Century Code, relating to certification of laboratories; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 23.1-01 of the North Dakota Century Code is created and enacted as follows:

#### **Environmental laboratories - Certification required - Fees.**

1. The department shall establish and administer a certification program for environmental laboratories. The department may:
  - a. Establish standards and procedures for certifying environmental laboratories;
  - b. Issue certifications to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certifications, and to deny, suspend, or revoke certifications for cause after notice and opportunity for hearing;
  - c. Specify in a certification the parameters and analytical procedures the environmental laboratory is certified to conduct;
  - d. Conduct onsite evaluations of certified environmental laboratories and applicants for certification;
  - e. Establish reasonable fees for certifying environmental laboratories, which must be deposited in the department operating fund and spent subject to appropriation by the legislative assembly;
  - f. Reject any testing or data submitted by an environmental laboratory not certified by the department;
  - g. Refuse to accept testing or data from a certified environmental laboratory when the department reasonably determines that the results do not meet reasonable criteria for validation; and
  - h. Adopt and enforce rules as necessary for implementation of this section.
2. Unless exempted by the department, all environmental laboratories that conduct tests or prepare data for submittal to the department must be certified by the department and comply with any conditions imposed by the certification.

3. The department may grant interim approval to operate an environmental laboratory required to obtain certification under this section if the laboratory was certified under any department program as of July 31, 2019. An environmental laboratory with interim approval shall apply immediately for certification once the department adopts rules for the issuance of certifications under this section. The interim approval is valid until the department acts on the application.

**SECTION 2. REPEAL.** Section 61-28.1-07 of the North Dakota Century Code is repealed.

**SECTION 3. EFFECTIVE DATE.** This Act is effective on August 1, 2019, if the Legislative Council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification in this section is not received by August 1, 2019, this Act is effective on the date certification is received.

Approved April 4, 2019

Filed April 5, 2019



## CHAPTER 218

### SENATE BILL NO. 2345

(Senators Wanzek, Dotzenrod, Luick)  
(Representatives Brandenburg, D. Johnson, Pollert)

AN ACT to amend and reenact sections 11-33-02.1, 11-33-22, 23-25-11, 23.1-06-15, 58-03-11.1, and 58-03-17 of the North Dakota Century Code, relating to animal feeding operations and zoning regulations; to provide a report to the legislative management; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 11-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **11-33-02.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:

a. ~~"Concentrated Animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:~~

(1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for at least forty-five days in a twelve-month period; and

(2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:

(1) The production of timber or forest products; or

(2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.

c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.

- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a ~~concentrated~~ animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of health.
2. For purposes of this section, animal units are determined as follows:
- a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
  - b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;~~
  - c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;~~
  - d. ~~One cow-calf pair equals 1.0 animal unit;~~
  - e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;~~
  - f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;~~
  - g. ~~One horse equals 2.0 animal units;~~
  - h. ~~One sheep or lamb equals 0.1 animal unit;~~
  - i. ~~One turkey equals 0.0182 animal unit;~~
  - j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
  - k. ~~One laying hen equals 0.012 animal unit;~~
  - l. ~~One duck equals 0.033 animal unit; and~~
  - m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight, provided in subdivision c of subsection 7 of section 23-25-11.~~
3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
4. A board of county commissioners may not preclude the development of a ~~concentrated~~ animal feeding operation in the county.
5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.

6. A board of county commissioners may adopt regulations that establish different standards for the location of ~~concentrated~~animal feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an animal feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any ~~concentrated~~animal feeding operation in existence before the effective date of the regulation.
8.
  - a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for ~~concentrated~~animal feeding operations and related agricultural operations are less than those in other districts.
  - b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for ~~concentrated~~animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
  - c. The setbacks provided for in this subsection may not vary by more than fifty percent from exceed those established in subdivision a of subsection 7 of section 23-25-11 unless the county can demonstrate compelling, objective evidence specific to the county which requires a greater setback within the county, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding operation will be or has been affected by the applicable county ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful.
  - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a ~~concentrated~~an animal feeding operation.
9. A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the state department of health under section 11-33-22 before the date the petition was received by the county. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of county commissioners does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the county allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's

authority under this section, and the approval process must comply with this section. The county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of county commissioners determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the county may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the state department of health, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. A board of county commissioners may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
- b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations.

**(Contingent effective date - See note) Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:

- a. ~~"Concentrated Animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:~~
  - (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for at least forty-five days in a twelve-month period; and
  - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
  - (1) The production of timber or forest products; or
  - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a ~~concentrated~~ an animal feeding operation,

including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of environmental quality.

2. For purposes of this section, animal units are determined as follows:
  - a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
  - b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;~~
  - c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;~~
  - d. ~~One cow-calf pair equals 1.0 animal unit;~~
  - e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;~~
  - f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;~~
  - g. ~~One horse equals 2.0 animal units;~~
  - h. ~~One sheep or lamb equals 0.1 animal unit;~~
  - i. ~~One turkey equals 0.0182 animal unit;~~
  - j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
  - k. ~~One laying hen equals 0.012 animal unit;~~
  - l. ~~One duck equals 0.033 animal unit; and~~
  - m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weights as provided in subdivision c of subsection 7 of section 23.1-06-15.~~
3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
4. A board of county commissioners may not preclude the development of a concentrated animal feeding operation in the county.
5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of county commissioners may adopt regulations that establish different standards for the location of concentrated animal feeding operations based on the size of the operation and the species and type being fed.

7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an animal feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any ~~concentrated~~animal feeding operation in existence before the effective date of the regulation.
8.
  - a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for ~~concentrated~~animal feeding operations and related agricultural operations are less than those in other districts.
  - b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for ~~concentrated~~animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
  - c. The setbacks provided for in this subsection may not ~~vary by more than fifty percent from~~exceed those established in subdivision a of subsection 7 of section 23.1-06-15 unless the county can demonstrate compelling, objective evidence specific to the county which requires a greater setback within the county, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23.1-06-15, a person whose animal feeding operation will be or has been affected by the applicable county ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful.
  - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a ~~concentrated~~an animal feeding operation.
9. A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 11-33-22 before the date the petition was received by the county. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of county commissioners does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the county allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of county commissioners determines the animal

feeding operation would comply with zoning regulations or fails to object under this section, the county may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the department of environmental quality, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. A board of county commissioners may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
- b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations.

**SECTION 2. AMENDMENT.** Section 11-33-22 of the North Dakota Century Code is amended and reenacted as follows:

**11-33-22. Regulation of concentrated animal feeding operations - Central repository.**

1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation, ~~as defined in section 11-33-02.1,~~ and which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
  - a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
  - b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

**(Contingent effective date - See note) Regulation of concentrated animal feeding operations - Central repository.**

1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation ~~and, as defined in section 11-33-02.1,~~ is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.
2. For purposes of this section:
  - a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are~~

~~concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~

- b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

**SECTION 3. AMENDMENT.** Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

**23-25-11. Regulation of odors - Rules. (Contingent repeal - [See note](#))**

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [1.5 kilometer] of the property boundary of the agricultural operation.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
  - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;
  - b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or
  - c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any



residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the pre-existing facility.

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.
4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.
6. For purposes of this section, ~~a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is:~~
  - a. "Business" means a commercial building used primarily to carry on a for-profit or nonprofit business which is not residential and not used primarily to manufacture or produce raw materials, products, or agricultural commodities;
  - b. "Campground" means a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis;

- c. "Church" means a building owned by a religious organization and used primarily for religious purposes;
  - d. "Park" means a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law;
  - e. "Public building" means a building owned by a county, city, township, school district, park district, or other unit of local government; the state; or an agency, industry, institution, board, or department of the state; and
  - f. "School" means a public school or nonprofit, private school approved by the superintendent of public instruction.
7. a. In a county or township that does not regulate the nature, scope, and/or location of an animal feeding operation under section 41-33-0211-33-02.1 or section 58-03-11.1, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
- (1) If there are fewer than three hundred animal units, there is no minimum setback requirement.
  - (2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].
  - (3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers] and the setback for any other animal operation is one-half mile [.80 kilometer].
  - (4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers] and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
  - (5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].
- b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.
- c. For purposes of this section:
- (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
  - (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
  - (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

- (4) One cow-calf pair equals 1.0 animal unit;
  - (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
  - (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
  - (7) One horse equals 2.0 animal units;
  - (8) One sheep or weaned lamb equals 0.1 animal unit;
  - (9) One turkey equals 0.0182 animal unit;
  - (10) One chicken, ~~other than a laying hen,~~ equals ~~0.0080~~0.01 animal unit;
  - (11) ~~One laying hen equals 0.012 animal unit;~~
  - (12) One duck or goose equals ~~0.0330~~0.2 animal unit; and
  - (13)~~(12)~~ Any weaned livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
- d. In a county or township that regulates the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant for an animal feeding operation permit shall submit to the department with the permit application the zoning determination made by the county or township under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1, unless the animal feeding operation is in existence by January 1, 2019, and there is no change in animals or animal units which would result in an increase in the setbacks provided for in this section. The department may not impose additional odor setback requirements.
- e. An animal feeding operation is not subject to zoning regulations adopted by a county or township after the date an application for the animal feeding operation is submitted to the department, provided construction of the animal feeding operation commences within three years from the date the final permit is issued and any permit appeals are exhausted. Unless there is a change to the location of the proposed animal feeding operation or there is a change in animal units which would result in an increase in the setbacks under this section, this exemption remains in effect if the department requires the applicant to submit a revised application.
- 8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.
  - 9. Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under sections ~~44-33-0211-33-02.1~~ and ~~58-03-1158-03-11.1~~.

**SECTION 4. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the person making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
  - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;
  - b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or
  - c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the pre-existing facility.
3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the department of environmental quality, and only by inspectors certified by the department who have successfully completed a department-sponsored

odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.

4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the department of environmental quality. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the department of environmental quality has established a specific limitation by rule.
6. For purposes of this section, ~~a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is:~~
  - a. "Business" means a commercial building used primarily to carry on a for-profit or nonprofit business which is not residential and not used primarily to manufacture or produce raw materials, products, or agricultural commodities;
  - b. "Campground" means a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis;
  - c. "Church" means a building owned by a religious organization and used primarily for religious purposes;
  - d. "Park" means a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law;
  - e. "Public building" means a building owned by a county, city, township, school district, park district, or other unit of local government; the state; or an agency, industry, institution, board, or department of the state; and

- f. "School" means a public school or nonprofit, private school approved by the superintendent of public instruction.
7. a. In a county or township that does not regulate the nature, scope, ~~and~~ location of an animal feeding operation under section ~~44-33-0211-33-02.1~~ or section 58-03-11.1, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
- (1) If there are fewer than three hundred animal units, there is no minimum setback requirement.
  - (2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].
  - (3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers], and the setback for any other animal operation is one-half mile [.80 kilometer].
  - (4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers], and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
  - (5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers], and the setback for any other animal operation is one mile [1.60 kilometers].
- b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.
- c. For purposes of this section:
- (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
  - (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
  - (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
  - (4) One cow-calf pair equals 1.0 animal unit;
  - (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
  - (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
  - (7) One horse equals 2.0 animal units;

- (8) One sheep or weaned lamb equals 0.1 animal unit;
- (9) One turkey equals 0.0182 animal unit;
- (10) One chicken, ~~other than a laying hen~~, equals ~~0.0080~~0.01 animal unit;
- (11) ~~One laying hen~~ equals ~~0.012~~ animal unit;
- (12) One duck or goose equals ~~0.0330~~0.2 animal unit; and
- (13)~~(12)~~ Any weaned livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms], whether single or combined animal weight.

- d. In a county or township that regulates the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or 58-03-11.1, an applicant for an animal feeding operation permit shall submit to the department with the permit application the zoning determination made by the county or township under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1, unless the animal feeding operation is in existence by January 1, 2019, and there is no change in animals or animal units which would result in an increase in the setbacks provided for in this section. The department may not impose additional odor setback requirements.
- e. An animal feeding operation is not subject to zoning regulations adopted by a county or township after the date an application for the animal feeding operation is submitted to the department, provided construction of the animal feeding operation commences within three years from the date the application is submitted. Unless there is a change to the location of the proposed animal feeding operation, this exemption remains in effect if the department requires the applicant to submit a revised application.
- 8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.
- 9. A county or township may not regulate or impose restrictions or requirements on animal feeding operations or other agricultural operations except as permitted under sections ~~41-33-02~~11-33-02.1 and ~~58-03-11~~58-03-11.1.

**SECTION 5. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-11.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

- 1. For purposes of this section:
  - a. "Concentrated Animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:

- (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for at least forty-five days in a twelve-month period; and
  - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
- (1) The production of timber or forest products; or
  - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a ~~concentrated~~ animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the state department of health.
2. For purposes of this section, animal units are determined as follows:
- a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
  - b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;~~
  - c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;~~
  - d. ~~One cow-calf pair equals 1.0 animal unit;~~
  - e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;~~
  - f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;~~
  - g. ~~One horse equals 2.0 animal units;~~
  - h. ~~One sheep or lamb equals 0.1 animal unit;~~
  - i. ~~One turkey equals 0.0182 animal unit;~~



- j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
  - k. ~~One laying hen equals 0.012 animal unit;~~
  - l. ~~One duck equals 0.033 animal unit; and~~
  - m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight provided under subdivision c of subsection 7 of section 23-25-11.~~
3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
  4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding operation in the township.
  5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
  6. A board of township supervisors may adopt regulations that establish different standards for the location of ~~concentrated~~ animal feeding operations based on the size of the operation and the species and type being fed.
  7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ animal feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any ~~concentrated~~ animal feeding operation in existence before the effective date of the regulation.
  8.
    - a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for ~~concentrated~~ animal feeding operations and related agricultural operations are less than those in other districts.
    - b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for ~~concentrated~~ animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
    - c. The setbacks provided for in this subsection may not ~~vary by more than fifty percent from~~ exceed those established in subdivision a of subsection 7 of section 23-25-11 unless the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback within the township, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding operation will be or has been affected by the applicable township ordinance may request the

agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful.

- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a ~~concentrated~~an animal feeding operation.

9. A person intending to construct an animal feeding operation may petition the board of township supervisors for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the state department of health under section 58-03-17 before the date the petition was received by the township. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of township supervisors does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the township zoning regulations. If the township allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of township supervisors determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the township may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the state department of health, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. A board of township supervisors may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
- b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations.

**(Contingent effective date - See note) Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:

- a. "ConcentratedAnimal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:

- (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and
  - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
    - (1) The production of timber or forest products; or
    - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
  - c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
  - d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a ~~concentrated~~ animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of environmental quality.
2. For purposes of this section, animal units are determined as follows:
    - a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
    - b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;~~
    - c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;~~
    - d. ~~One cow-calf pair equals 1.0 animal unit;~~
    - e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;~~
    - f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;~~
    - g. ~~One horse equals 2.0 animal units;~~
    - h. ~~One sheep or lamb equals 0.1 animal unit;~~
    - i. ~~One turkey equals 0.0182 animal unit;~~

- j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
  - k. ~~One laying hen equals 0.012 animal unit;~~
  - l. ~~One duck equals 0.033 animal unit; and~~
  - m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight provided under subdivision c of subsection 7 of section 23.1-06-15.~~
3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
  4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding operation in the township.
  5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
  6. A board of township supervisors may adopt regulations that establish different standards for the location of ~~concentrated~~ animal feeding operations based on the size of the operation and the species and type being fed.
  7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ animal feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any ~~concentrated~~ animal feeding operation in existence before the effective date of the regulation.
  8.
    - a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for ~~concentrated~~ animal feeding operations and related agricultural operations are less than those in other districts.
    - b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for ~~concentrated~~ animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
    - c. The setbacks provided for in this subsection may not ~~vary by more than fifty percent from~~ exceed those established in subdivision a of subsection 7 of section 23.1-06-15 unless the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback within the township, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23.1-06-15, a person whose animal feeding operation will be or has been affected by the applicable township ordinance may request the

agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful.

- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a ~~concentrated~~an animal feeding operation.

9. A person intending to construct an animal feeding operation may petition the board of township supervisors for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 58-03-17 before the date the petition was received by the township. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of township supervisors does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the township zoning regulations. If the township allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of township supervisors determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the township may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the department of environmental quality, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. A board of township supervisors may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
- b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations.

**SECTION 6. AMENDMENT.** Section 58-03-17 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

4. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation, as defined in section 58-03-11.1, and which is promulgated by a township after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.

2. For purposes of this section:

- a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
- b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

**(Contingent effective date - See note) Regulation of concentrated animal feeding operations - Central repository.**

1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation and which is promulgated by a township after July 31, 2007, as defined in section 58-03-11.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10. Any zoning regulation that pertains to a ~~concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the department of environmental quality for inclusion in the central repository.~~
2. For purposes of this section:

- a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
- b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

**SECTION 7. REPORT TO THE LEGISLATIVE MANAGEMENT - PERMIT APPLICATION APPROVALS AND DENIALS.** On or before October 1, 2020, the department of environmental quality shall provide a report to the legislative management on all animal feeding operation permit applications approved or denied by the department, including the relevant county and township zoning and setback determinations, and related issues during the first full year of the 2019-21 biennium. Through October 1, 2020, all local government entities that review animal feeding operation permit applications shall report to the department of environmental quality each permit approval and denial within thirty days of the decision to approve or deny the application.

**SECTION 8. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.** The portions of sections 1, 2, 5, and 6 of this Act not subject to an existing contingency become effective on August 1, 2019, and remain in effect until the legislative council receives certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been

transferred to the department of environmental quality. The remainder of sections 1, 2, 5, and 6 become effective on August 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If, by August 1, 2019, the legislative council has not received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality, the remainder of sections 1, 2, 5, and 6 of this Act become effective on the date certification is received.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 219

### HOUSE BILL NO. 1200

(Representatives D. Ruby, Becker, Johnston, Kasper, Lanning, Lefor, Marschall)  
(Senators Hogue, Kreun, Vedaa)

AN ACT to create and enact section 23-29-07.12 and a new section to chapter 23.1-08 of the North Dakota Century Code, relating to prohibiting a political subdivision from regulating an auxiliary container; to amend and reenact sections 23-29-03 and 23.1-08-02 of the North Dakota Century Code, relating to the definition of auxiliary container; 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 23-29-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-29-03. Definitions. (Contingent repeal - [See note](#))**

1. "Auxiliary container" means a bag, cup, bottle, straw, or other packaging, whether reusable or single-use, which is:
  - a. Made of cloth, paper, plastic, corrugated material, aluminum, glass, postconsumer recycled material, or a similar material or substrate, including a coated, laminated, or multilayer substrate; and
  - b. Designated for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.
2. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
- ~~2-3.~~ "Department" means the state department of health.
- ~~3-4.~~ "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
- ~~4-5.~~ "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
- ~~5-6.~~ "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
- ~~6-7.~~ "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.



- ~~7-8.~~ "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
- ~~8-9.~~ "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or other similar appliance.
- ~~9-10.~~ "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities; by public and private facilities; and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
- ~~10-11.~~ "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
- ~~11-12.~~ "Person" means any individual, corporation, limited liability company, partnership, firm, association, trust, estate, public or private institution, group, federal agency, political subdivision of this state or any other state or political subdivision thereof, and any legal successor, representative agent, or agency of the foregoing.
- ~~12-13.~~ "Political subdivision" means a city, county, township, or solid waste management authority.
- ~~13-14.~~ "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid waste.
- ~~14-15.~~ "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
- a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
  - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
- ~~15-16.~~ "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
- ~~16-17.~~ "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production;

waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.

47-18. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.

48-19. "Transport" means the offsite movement of solid waste.

**SECTION 2.** Section 23-29-07.12 of the North Dakota Century Code is created and enacted as follows:

**23-29-07.12. Prohibition on political subdivision ordinance regulating auxiliary containers.**

1. Notwithstanding any other provision of law, a political subdivision may not adopt or enforce an ordinance that:
  - a. Regulates the use or disposition of an auxiliary container;
  - b. Prohibits or restricts an auxiliary container; or
  - c. Imposes a fee, charge, or tax on an auxiliary container.
2. This section may not be construed to prohibit or restrict:
  - a. A curbside or commercial recycling program;
  - b. A designated residential or commercial recycling location;
  - c. A political subdivision from adopting or enforcing an ordinance prohibiting littering; or
  - d. A political subdivision or a public or private facility from using or regulating an auxiliary container on property owned by the respective political subdivision or public or private facility.

**SECTION 3. AMENDMENT.** Section 23.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-08-02. Definitions. (Contingent effective date - [See note](#))**

1. "Auxiliary container" means a bag, cup, bottle, straw, or other packaging, whether reusable or single-use, which is:
  - a. Made of cloth, paper, plastic, corrugated material, aluminum, glass, postconsumer recycled material, or a similar material or substrate, including a coated, laminated, or multilayer substrate; and
  - b. Designated for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.
2. "Collection" means the aggregation of solid waste from the places at which the waste was generated.

- 2-3. "Department" means the department of environmental quality.
- 3-4. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
- 4-5. "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23.1-04, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
- 5-6. "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
- 6-7. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
- 7-8. "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
- 8-9. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or similar appliance.
- 9-10. "Municipal waste" means solid waste that includes garbage; refuse; and trash generated by households, motels, hotels, recreation facilities, public and private facilities; and commercial, wholesale, private, and retail businesses. The term does not include special waste or industrial waste.
- 10-11. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
- 11-12. "Political subdivision" means a city, county, township, or solid waste management authority.
- 12-13. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid waste.
- 13-14. "Solid waste" means any garbage; refuse; sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
- Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
  - Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point

sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].

- 44-15. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
- 45-16. "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
- 46-17. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
- 47-18. "Transport" means the offsite movement of solid waste.

**SECTION 4.** A new section to chapter 23.1-08 of the North Dakota Century Code is created and enacted as follows:

**Prohibition on political subdivision ordinance regulating auxiliary containers.**

1. Notwithstanding any other provision of law, a political subdivision may not adopt or enforce an ordinance that:
  - a. Regulates the use or disposition of an auxiliary container;
  - b. Prohibits or restricts an auxiliary container; or
  - c. Imposes a fee, charge, or tax on an auxiliary container.
2. This section may not be construed to prohibit or restrict:
  - a. A curbside or commercial recycling program;
  - b. A designated residential or commercial recycling location;
  - c. A political subdivision from adopting or enforcing an ordinance prohibiting littering; or
  - d. A political subdivision or a public or private facility from using or regulating an auxiliary container on property owned by the respective political subdivision or public or private facility.

**SECTION 5. EFFECTIVE DATE - EXPIRATION DATE.** If, by August 1, 2019, the legislative council has not received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality, section 2 of this Act becomes

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effective on August 1, 2019, and remains in effect until the date certification is received, after which section 2 of this Act is ineffective. If the certification is received before August 1, 2019, section 2 of this Act does not become effective.

Sections 3 and 4 of this Act become effective on August 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by August 1, 2019, sections 3 and 4 of this Act become effective on the date certification is received.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 220

### SENATE BILL NO. 2108

(Energy and Natural Resources Committee)  
(At the request of the Department of Health)

AN ACT to create and enact a new subsection to section 23.1-08-23 of the North Dakota Century Code, relating to citizen suit and intervention; to amend and reenact section 23.1-08-04 of the North Dakota Century Code, relating to coal combustion residuals; to provide a penalty; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 23.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-08-04. Coal combustion ~~residues~~residuals - Present use and disposal deemed acceptable. (Contingent effective date - [See note](#))**

Notwithstanding any other provision of law, the legislative assembly deems the present use and disposal of coal combustion ~~residues~~residuals to be acceptable and that present regulation allows for the beneficial use of coal combustion ~~residues~~residuals in concrete, for other construction applications, and for other innovative uses and allows for safe disposal without coal combustion ~~residues~~residuals being regulated as a hazardous waste. If a federal law or regulation is adopted pertaining to the use and disposal of coal combustion ~~residues~~residuals, this section does not prohibit the state from seeking state primacy of the federal program.

**SECTION 2.** A new subsection to section 23.1-08-23 of the North Dakota Century Code is created and enacted as follows:

The following citizen participation provisions apply to violations of this chapter relating to coal combustion residuals or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter relating to coal combustion residuals:

- a. A person having an interest that may be affected adversely by a violation of this chapter may commence a civil action to compel compliance with this chapter, or a rule, order, or permit issued under this chapter.
- b. Notice of the violation must be given to the department and to an alleged violator sixty days before commencement of a citizen suit brought under this subsection.
- c. A person with an interest that may be affected adversely by a violation of this chapter may intervene as a matter of right in a civil action brought by the department to require compliance with this chapter.

**SECTION 3. EFFECTIVE DATE.** This Act is effective on August 1, 2019, if the Legislative Council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties

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from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification in this section is not received by August 1, 2019, this Act is effective on the date certification is received.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 221

### HOUSE BILL NO. 1263

(Representatives Dockter, Grueneich, D. Ruby)  
(Senator Rust)

AN ACT to create and enact a new subsection to section 39-26-07 of the North Dakota Century Code, relating to right of an owner to reclaim an abandoned vehicle; to amend and reenact sections 23.1-15-01, 23.1-15-03, 23.1-15-05, 23.1-15-06, 23.1-15-07, 39-26-02, and 39-26-06 of the North Dakota Century Code, relating to custody and disposition of abandoned motor vehicles; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-01. Definitions. (Contingent effective date - [See note](#))**

For purposes of this chapter, unless the context otherwise requires:

1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, that has remained for a period of more than forty-eight hours on public property illegally or lacking vital component parts, ~~or has remained for a period of more than forty-eight hours~~ located on private property without consent of the person in control of the property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 23.1-15-09. An antique automobile, as defined in section 39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.
2. "Collector" means the owner of one or more special interest vehicles that collects, purchases, acquires, trades, or disposes of special interest vehicles or parts of special interest vehicles for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.
3. "Commercial towing service" means a registered business in North Dakota that tows motor vehicles.
4. "Department" means the department of environmental quality.
- 4.5. "Emergency towing" means the towing of a vehicle due to a motor vehicle accident, mechanical breakdown on public roadway, or other emergency-related incident necessitating vehicle removal for public safety with or without the owner's consent.



6. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.
- 5-7. "Special interest vehicle" means a motor vehicle that is at least twenty years old and has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
- 6-8. "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
- 7-9. "Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.

**SECTION 2. AMENDMENT.** Section 23.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-03. Custody of abandoned vehicle. (Contingent effective date - [See note](#))**

Units of government may take into custody and impound an abandoned motor vehicle. If requested by an owner, lessee, tenant, or occupant of private property, a commercial towing service may remove and take into custody an abandoned motor vehicle located on the private property.

**SECTION 3. AMENDMENT.** Section 23.1-15-05 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-05. Notice to owner and law enforcement of abandoned vehicle. (Contingent effective date - [See note](#))**

1. When an abandoned motor vehicle does not fall within the provisions of section 23.1-15-04, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle, and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 23.1-15-06, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale/disposal of the vehicle at a public auction pursuant to section 23.1-15-07.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.
3. Subject to section 23.1-15-04, a commercial towing service that takes an abandoned motor vehicle into custody shall provide notice to the law

enforcement agency having jurisdiction in the location from which the motor vehicle was towed within twelve hours after completing the tow.

4. Notice under subsection 3 must include:
  - a. The license plate number and state of registration;
  - b. The location from which the motor vehicle was towed;
  - c. The location to which the motor vehicle was towed;
  - d. The name, address, and telephone number of the commercial towing service that towed and is storing the motor vehicle; and
  - e. A description of the motor vehicle, including make, model, year, and color.
5. A commercial towing service that violates subsection 3 may not collect a storage fee under section 23.1-15-06 and shall return the motor vehicle to the registered owner at no cost to the owner.

**SECTION 4. AMENDMENT.** Section 23.1-15-06 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-06. Right of owner to reclaim abandoned vehicle. (Contingent effective date - [See note](#))**

1. The owner, secured parties, or ~~any~~ a lienholder of an abandoned motor vehicle has a right to reclaim such vehicle from the unit of government taking ~~it~~ the motor vehicle into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within ~~fifteen~~ thirty days after the date of the notice required by section 23.1-15-05.
2. The owner, secured parties, or a lienholder of an abandoned motor vehicle, within thirty days after receipt of the notice required by section 23.1-15-05, has a right to reclaim the vehicle from a commercial towing service taking the motor vehicle into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody.
3. Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned passenger vehicle, pickup, van, or truck that does not exceed twenty thousand registered gross weight pounds [9071.85 kilograms].
4. Nothing in this chapter may be construed to impair any lien of a garagekeeper under the laws of this state or the right of a lienholder or secured parties to foreclose. For the purposes of this section, "garagekeeper" is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair, or maintenance of motor vehicles.
5. This section also applies to emergency towing.

**SECTION 5. AMENDMENT.** Section 23.1-15-07 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-07. ~~Public sale~~Disposal of vehicle - Disposition of proceeds. (Contingent effective date - [See note](#))**

1. An abandoned motor vehicle not more than seven model years of age taken into custody by a unit of government and not reclaimed under section 23.1-15-06 must be sold to the highest bidder at public auction or sale, following reasonable published notice. The purchaser must be given a receipt in a form prescribed by the department which is sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.
2. ~~From the proceeds of the sale of an abandoned motor vehicle, the unit of government shall reimburse itself for the cost of towing, preserving, and storing the vehicle, and all notice and publication costs incurred pursuant to this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be deposited in the state treasury as provided in section 1 of article IX of the Constitution of North Dakota and credited to the permanent school fund.~~ If a commercial towing service takes custody of an abandoned motor vehicle and the vehicle is not reclaimed under section 23.1-15-06, the commercial towing service may obtain a release from the department of transportation which is sufficient title to dispose of the vehicle. The release entitles the commercial towing service to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on the abandoned vehicle must be removed and destroyed upon receipt of the new title.
3. ~~From the proceeds of the sale of an abandoned motor vehicle, the unit of government or the commercial towing service may reimburse itself for the cost of towing, preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.~~

**SECTION 6. AMENDMENT.** Section 39-26-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-26-02. Definitions. (Contingent repeal - [See note](#))**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, that has remained for a period of more than forty-eight hours on public property illegally or lacking vital component parts, or is located on private property without consent of the person in control of such property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 39-26-10. An antique automobile, as defined in section 39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.
2. "Collector" means the owner of one or more special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest vehicles

or parts thereof for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.

3. "Commercial towing service" means a registered business in North Dakota that tows motor vehicles.
4. "Department" means the state department of health.
5. "Emergency towing" means the towing of a vehicle due to a motor vehicle accident, mechanical breakdown on public roadway, or other emergency-related incident necessitating vehicle removal for public safety with or without the owner's consent.
6. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.
- ~~6-7.~~ "Special interest vehicle" means a motor vehicle which is at least twenty years old and which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
- ~~7-8.~~ "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
- ~~8-9.~~ "Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.

**SECTION 7. AMENDMENT.** Section 39-26-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-26-06. Notice to owner of abandoned vehicle. (Contingent repeal - [See note](#))**

1. When an abandoned motor vehicle does not fall within the provisions of section 39-26-05, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 39-26-07, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the disposal of the vehicle pursuant to section 39-26-08.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.

3. Subject to section 39-26-05, a commercial towing service that takes an abandoned motor vehicle into custody shall provide notice to the law enforcement agency having jurisdiction in the location from which the motor vehicle was towed within twelve hours after completing the tow.
4. Notice under subsection 3 must include:
  - a. The license plate number and state of registration;
  - b. The location from which the motor vehicle was towed;
  - c. The location to which the motor vehicle was towed;
  - d. The name, address, and telephone number of the commercial towing service that towed and is storing the motor vehicle; and
  - e. A description of the motor vehicle, including make, model, year, and color.
5. A commercial towing service that violates subsection 3 may not collect a storage fee under section 39-26-07 and shall return the motor vehicle to the registered owner at no cost to the owner.

**SECTION 8.** A new subsection to section 39-26-07 of the North Dakota Century Code is created and enacted as follows:

This section also applies to emergency towing.

**SECTION 9. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 26, 2019

Filed March 27, 2019

# HIGHWAYS, BRIDGES, AND FERRIES

## CHAPTER 222

### SENATE BILL NO. 2268

(Senators Patten, Bekkedahl, Wardner)  
(Representatives Kempenich, Lefor, Zubke)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to a corridors of commerce program and fund.

#### 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:

#### **Corridors of commerce program - Corridors of commerce fund.**

1. The department shall administer a corridors of commerce program for constructing, reconstructing, improving, and maintaining highways that improve freight transportation and facilitate commerce.
2. The corridors of commerce fund is a special fund in the state treasury administered by the department. The fund consists of all money deposited in the fund. Pursuant to legislative appropriations, the department shall use moneys in the fund for eligible highway projects in accordance with provisions of this section.
3. To be eligible for funding under this section:
  - a. Any construction work associated with the project must begin within three years after the department selects the project for funding, unless the department grants an exemption; and
  - b. The highway project must meet at least one of the following criteria:
    - (1) The project is a segment of highway with the following characteristics:
      - (a) The existing segment is not a divided highway;
      - (b) At least one end of the segment connects to an expressway or freeway; and
      - (c) The segment will connect to a proposed or existing interchange;
    - (2) The project will ease the movement of freight traffic;
    - (3) The project will improve safety on the highway;

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- (4) The project will allow oversized or overweight vehicles to use the highway after completion;
  - (5) The project will provide increased connectivity between areas of significant commerce; or
  - (6) The highway is or will be designated as national high priority corridor of connectivity.
4. When evaluating eligible projects for funding under this section, the department shall score each eligible project, make the scores available to the public, and consider:
- a. The return on investment;
  - b. Measurable improvements in commerce and economic competitiveness;
  - c. Efficiency in traffic flow based on average daily traffic counts, commercial vehicle miles traveled, and travel times;
  - d. Safety improvements;
  - e. Connections to regional trade centers or other modes of transportation; and
  - f. Community support for the project.
5. The funding provided to an eligible highway project may be used to plan, construct, replace, improve, or maintain the highway.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 223

### HOUSE BILL NO. 1404

(Representatives Lefor, Simons, Steiner)  
(Senators Bekkedahl, Rust, Wardner)

AN ACT create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to designating state highway 22 as the veterans memorial highway; and to provide a continuing appropriation.

#### **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:

#### **Veterans memorial highway - State highway 22 - Continuing appropriation.**

The department shall designate state highway 22 from the South Dakota border to the junction of state highway 22 and state highway 23 as the veterans memorial highway and shall place signs along the highway designating that name. The department may accept any appropriate signs or funds donated to the department for the placement of signs. Any donated funds are appropriated to the department on a continuing basis for the purpose of providing signs designating state highway 22 as the veterans memorial highway.

Approved March 12, 2019

Filed March 13, 2019



## CHAPTER 224

### HOUSE BILL NO. 1432

(Representatives Richter, Dockter, Kempenich, Longmuir, Zubke)  
(Senators Bekkedahl, Kannianen, Patten)

AN ACT to amend and reenact section 24-05-04 of the North Dakota Century Code, relating to purchasing road machinery.

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

**SECTION 1. AMENDMENT.** Section 24-05-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **24-05-04. Contracts to be advertised - Road construction - Requirements for rental contracts.**

1. If a contract for a highway improvement exceeds one hundred thousand dollars, the board of county commissioners shall seek bids by publishing an advertisement at least once each week for two consecutive weeks in the official newspaper of the county and in other newspapers as the board deems advisable. The first publication must be made at least fifteen days before the day set for the opening of the bids. For any contract for a highway improvement that exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the county, when possible, shall seek quotes from at least two contractors.
2. ~~A~~Except as provided in section 54-44.4-13, a purchase of county road machinery and any rental contract or agreement for the use of road machinery and other articles, except necessary repairs for road machinery, which exceeds the sum of ~~fiftyone~~ hundred thousand dollars must be advertised by publishing an advertisement for bids at least once each week for two consecutive weeks in the official newspaper of the county and in any other newspapers as the board deems advisable. The first publication must be made at least fifteen days before the day set for the opening of the bids. The board of county commissioners may not enter a rental contract or agreement for the use of road machinery and other articles for a longer period than twelve months from the date of the rental contract or agree to pay rental for the use of road machinery and other articles which would result in the lessor receiving rental at a rate in excess of twenty percent per year of the cash sale price of the road machinery or other articles. The cash sale price of the road machinery and other articles must be clearly set forth in any rental contract for road machinery and other articles and failure to include this data in any rental contract for the use of road machinery and other articles renders the rental contract void. A payment made under a void rental contract is recoverable from the county commissioners making the contract, jointly and severally.
3. Notwithstanding the provisions of this section relating to the duration of rental contracts, the board of county commissioners may enter lease-purchase agreements for the road machinery and articles covered by this section if those agreements provide for the complete performance and full payment of the purchase price of the machinery or articles within seven years from the

date of the execution of the lease-purchase agreement according to section 44-08-01.1.

4. Notwithstanding the provisions of this section relating to bidding of road machinery, the board of county commissioners or its designee may purchase used road machinery at public auction or as surplus property from the office of management and budget.
5. Bids received under this section must be opened and awarded under the procedure provided in section 48-01.2-07.

Approved April 10, 2019

Filed April 11, 2019

# MENTAL AND PHYSICAL ILLNESS OR DISABILITY

## CHAPTER 225

### SENATE BILL NO. 2240

(Senators J. Lee, Hogan)  
(Representatives D. Anderson, Damschen, J. Nelson)

AN ACT to amend and reenact section 1-04-07, subsection 1 of section 5-01-09, sections 12.1-20-06.1 and 19-03.3-05, subdivision f of subsection 3 of section 23-01-44, section 25-03.1-01, subsections 3, 12, 13, and 23 of section 25-03.1-02, section 25-03.1-04, subsection 2 of section 25-03.1-09, sections 25-03.1-34.1, 25-03.1-34.2, and 38-10-01, subdivision l of subsection 1 of section 43-05-16, section 43-05-16.4, subsection 3 of section 43-17.1-06, subsection 3 of section 50-25.1-16, and section 50-25.1-18 of the North Dakota Century Code, relating to references to substance abuse disorders.

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

**SECTION 1. AMENDMENT.** Section 1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **1-04-07. Assignment of mortgage by foreign executor, administrator, or guardian.**

Any assignment of a mortgage upon property within this state heretofore made by any executor or administrator appointed in any other state or foreign country on the estate of any person where no executor or administrator had been appointed in this state, if such executor or administrator has filed in the office of the recorder of any county in which any such mortgage was filed or recorded an authenticated copy of the person's appointment, and any assignment of a mortgage upon property within this state heretofore made by any heir or legatee of such deceased person, if such heir or legatee has recorded in the office of the recorder an authenticated copy of the judgment or decree of the foreign court transferring to such heir or legatee the ownership of such mortgage, and any assignment of a mortgage upon property within this state heretofore made by any guardian appointed in any other state or foreign country, of a minor, ~~habitual drunkard, spendthrift, or an individual who is incompetent person~~, holding and owning a mortgage upon property in this state, if such guardian has filed in the office of the recorder of the county in which the property is situated an authenticated copy of the person's appointment as guardian, and an authenticated copy of the judgment or decree of the foreign court, if any, transferring to the guardian's ward the ownership of such mortgage, if such assignment was made prior to the date of the taking effect of this code, hereby is declared to be legal and valid for all purposes, and of the same force and effect as though such executor, administrator, guardian, heir, or legatee had been authorized specifically by law to make such assignment. The provisions of this section apply to all mortgages, judgments, or other liens upon real or personal property, and to the foreclosure of any such mortgage or lien on real or personal property.

**SECTION 2. AMENDMENT.** Subsection 1 of section 5-01-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Any individual knowingly delivering alcoholic beverages to an individual under twenty-one years of age, except as allowed under section 5-02-06, or to a ~~habitual drunkard~~; an incompetent; or an obviously intoxicated individual is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.

**SECTION 3. AMENDMENT.** Section 12.1-20-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-06.1. Sexual exploitation by therapist - Definitions - Penalty.**

Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation, interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. A complaint of a violation of this section may be made to the police department of the city in which the violation occurred, the sheriff of the county in which the violation occurred, or the bureau of criminal investigation. Local law enforcement agencies and the bureau of criminal investigation shall cooperate in investigations of violations of this section. As used in this section, unless the context or subject matter otherwise requires:

1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.
2. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, ~~chemical dependency~~addiction counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy.

**SECTION 4. AMENDMENT.** Section 19-03.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.3-05. Application.**

This chapter does not apply to a person being treated by a physician for ~~chemical dependency~~a substance use disorder because of the person's use of controlled substances not related to treatment for pain. This chapter does not authorize a physician to prescribe or administer any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes. A person to whom controlled substances are prescribed or administered for pain is not exempt from section 39-08-01 or 39-20-04.1.

<sup>98</sup> **SECTION 5. AMENDMENT.** Subdivision f of subsection 3 of section 23-01-44 of the North Dakota Century Code is amended and reenacted as follows:

- f. Provide ~~drug~~ addiction treatment information, and referrals to ~~drug~~ treatment programs, including programs in the local area and programs that offer medication-assisted treatment that includes a federal food and drug administration approved long-acting, non-addictive medication for the treatment of opioid or alcohol ~~dependence~~use disorder;

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<sup>98</sup> Section 23-01-44 was also amended by section 1 of Senate Bill No. 2198, chapter 392.

**SECTION 6. AMENDMENT.** Section 25-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-01. Legislative intent.**

The provisions of this chapter are intended by the legislative assembly to:

1. Provide prompt evaluation and treatment of persons with serious mental disorders or chemical dependency substance use disorder.
2. Safeguard individual rights.
3. Provide continuity of care for persons with serious mental disorders or chemical dependency substance use disorder.
4. Encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures.
5. Encourage, whenever appropriate, that services be provided within the community.

<sup>99</sup> **SECTION 7. AMENDMENT.** Subsections 3, 12, 13, and 23 of section 25-03.1-02 of the North Dakota Century Code are amended and reenacted as follows:

3. "~~Chemically dependent person~~Individual with a substance use disorder" or "~~person who is chemically dependent~~" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
12. "Mentally ill person" or "person who is mentally ill" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. The term does not include an individual with an intellectual disability of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who is intellectually disabled may also be a person who is mentally ill. ~~Chemical dependency~~A substance use disorder does not per se constitute mental illness, although a ~~person who is chemically dependent~~an individual with a substance use disorder may also be a person who is mentally ill.
13. "Person requiring treatment" means a person who is mentally ill or a ~~person who is chemically dependent~~an individual with a substance use disorder, and there is a reasonable expectation that if the individual is not treated for the mental illness or ~~chemical dependency~~substance use disorder there exists a serious risk of harm to that individual, others, or property.
23. "Treatment facility" or "facility" means any hospital, including the state hospital at Jamestown, or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to individuals who are mentally ill or ~~chemically dependent~~have a substance use disorder.

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<sup>99</sup> Section 25-03.1-02 was also amended by section 1 of House Bill No. 1453, chapter 226.

**SECTION 8. AMENDMENT.** Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-04. Screening and admission to a public treatment facility.**

Under rules adopted by the department, screening of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or ~~chemical dependency~~ substance use disorder must be performed, in person when reasonably practicable, by a regional human service center. This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a mental health professional, the individual's legal guardian, a minor's parent or legal custodian, or the individual requesting services, the regional human service center shall conduct a screening. If a request for screening is made by a mental health professional and the individual who is the subject of the screening does not authorize the disclosure of the individual's protected health information, upon the request of the regional human service center, any mental health professional who treated the individual within the previous six months shall disclose, subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human service center any relevant protected health information regarding that treatment. Upon receipt of the request, the regional human service center shall arrange for a screening of the individual and, if appropriate, shall treat the applicant or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or director shall immediately designate a tier 1 or tier 2 mental health professional to examine the individual.

**SECTION 9. AMENDMENT.** Subsection 2 of section 25-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. If probable cause has been established, the magistrate shall cause to be served on the respondent and the respondent's nearest relative or guardian or, if none, a friend of the respondent:
  - a. A copy of the petition and supporting documentation.
  - b. A notice informing the respondent of the procedures required by this chapter.
  - c. A notice of the respondent's right to a preliminary and a treatment hearing when in custody under section 25-03.1-25 and if mental illness or a combination of mental illness and ~~chemical dependency~~ substance use disorder of the respondent is alleged in the petition, or, if not in custody or if in custody and ~~chemical dependency~~ substance use disorder alone is alleged in the petition, the right to a treatment hearing; of the right to be present at the hearings; of the right to have counsel before the hearings and any court-ordered examination; of the right to an independent evaluation; and, if the respondent is indigent, of the right to counsel and to an independent expert examiner, each at the expense of the county which is the respondent's place of residence.
  - d. Notice that if an independent expert examiner is to be appointed, the respondent must be given an opportunity to select that examiner.

**SECTION 10. AMENDMENT.** Section 25-03.1-34.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-34.1. Exchange of chemically dependent patient or prisoner.**

The director of the department of human services, a county, a city, or a local law enforcement agency may enter into reciprocal agreements with the appropriate authorities of any other state regarding the mutual exchange, return, and transportation of ~~chemically dependent or mentally ill patients or prisoners~~ individuals with a mental illness or substance use disorder who are treated or confined in hospitals of one state for treatment of ~~chemical dependency~~ a substance use disorder or mental illness but who have legal residence in another state.

**SECTION 11. AMENDMENT.** Section 25-03.1-34.2 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-34.2. Interstate contracts for treatment of mental illness or chemical dependency substance use disorder.**

1. For purposes of this section, "bordering state" means Minnesota, Montana, or South Dakota.
2. Unless prohibited by another law and subject to the exceptions in subsection 3, the department may contract with any appropriate treatment or detoxification facility in a bordering state for the treatment of mental illness or ~~chemical dependency~~ substance use disorders or for providing ~~chemical dependency~~ substance use disorder detoxification services for residents of North Dakota. The department may also contract with any public or private agency or facility to provide treatment of mental illness or ~~chemical dependency~~ substance use disorders or to provide ~~chemical dependency~~ substance use disorder detoxification services in North Dakota to residents of a bordering state. An individual who receives treatment for mental illness or ~~chemical dependency~~ a substance use disorder or who receives ~~chemical dependency~~ substance use disorder detoxification services in another state under this section is subject to the laws of the state in which treatment or detoxification is provided. An individual who receives treatment or detoxification in another state under this section must be informed of the consequences of receiving treatment or detoxification in another state, including the implications of the differences in state laws.
3. A contract may not be entered under this section for treatment or detoxification to individuals who:
  - a. Are serving a sentence after conviction of a criminal offense;
  - b. Are on probation or parole;
  - c. Are the subject of a presentence investigation; or
  - d. Have been committed involuntarily in North Dakota under chapter 25-03.1 for treatment of mental illness or ~~chemical dependency~~ a substance use disorder, except as provided under subsection 5.
4. Contracts entered under this section must, at a minimum:
  - a. Describe the services to be provided;
  - b. Establish responsibility for the costs of services;
  - c. Establish responsibility for the costs of transporting individuals receiving services under this section;

- d. Specify the duration of the contract;
  - e. Specify the means of terminating the contract;
  - f. Specify the terms and conditions for refusal to admit or retain an individual; and
  - g. Identify the goals to be accomplished by the placement of an individual under this section.
5. The department may enter negotiations with appropriate personnel of a bordering state to develop an agreement that conforms to the requirements of this section. An agreement with a bordering state must enable the placement in North Dakota of individuals who require detoxification services, are on emergency holds, or who have been involuntarily committed as mentally ill or ~~chemically dependent~~having a substance use disorder in a bordering state and enable the temporary placement in a bordering state of patients who require detoxification services or who are on emergency holds in North Dakota under chapter 25-03.1. An agreement with a bordering state must also provide that the North Dakota courts retain jurisdiction over North Dakota residents, and that the bordering state affords to North Dakota residents the rights afforded to them under North Dakota law. Individuals committed by a court of a bordering state and placed in North Dakota facilities continue to be in the legal custody of the bordering state. The bordering state's laws governing length of commitment, re-examinations, and extension of commitment must continue to apply to these residents. In all other respects, residents of a bordering state placed in North Dakota facilities are subject to North Dakota laws. An agreement with a bordering state must specify that responsibility for payment for the cost of care of a resident of a bordering state remains with the bordering state of which that individual is a resident and the cost of care of a North Dakota resident remains with the state of North Dakota. This section applies to detoxification services regardless of whether the services are provided on a voluntary or involuntary basis.

**SECTION 12. AMENDMENT.** Section 38-10-01 of the North Dakota Century Code is amended and reenacted as follows:

**38-10-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "District court" means the district court having jurisdiction of the estate of which the personal representative involved is administrator, executor, or guardian, as the case may be.
2. "Estate" means the estate of a person who died testate or intestate and the estate of a minor or of an individual who is incompetent; or a spendthrift; or habitual drunkard under guardianship.
3. "Lease for production" means any lease of property of an estate for the purpose of mining or of drilling and operating for oil, including the laying of pipelines and the building of tanks, power stations, and other structures upon the lands described in such lease for the purpose of producing, saving, and taking care of products of the mine or well.



4. "Personal representative" means an executor of the last will or the administrator of the estate of a deceased person, or a guardian of the estate of a minor or of an incompetent; ~~or spendthrift; or habitual drunkard.~~

**SECTION 13. AMENDMENT.** Subdivision l of subsection 1 of section 43-05-16 of the North Dakota Century Code is amended and reenacted as follows:

- l. Inability to practice podiatric medicine with reasonable skill and safety to patients because of physical or mental illness, ~~chemical dependency~~ substance use disorder, or as a result of any mental or physical condition or disability.

**SECTION 14. AMENDMENT.** Section 43-05-16.4 of the North Dakota Century Code is amended and reenacted as follows:

**43-05-16.4. Mental examination - Access to medical data.**

1. If the board has probable cause to believe that a podiatrist or applicant for license falls within the provisions of subdivision l or q of subsection 1 of section 43-05-16, it may direct the podiatrist or applicant for license to submit to a mental or physical examination or ~~chemical dependency~~ an addiction evaluation. A podiatrist licensed or permitted under this chapter or an applicant for a license is considered to have consented to submit to a mental or physical examination or ~~chemical dependency~~ an addiction examination when directed in writing by the board and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground that the examination constitutes a privileged communication. The failure of a podiatrist or applicant for a license to submit to an examination when directed constitutes an admission of the allegations against the podiatrist or applicant for license and a default and final order may be entered without the taking of testimony or presentation of evidence unless the failure was due to circumstances beyond the podiatrist's or applicant's control. A podiatrist or applicant for a license must, at reasonable intervals, be given an opportunity to demonstrate that the podiatrist or applicant can resume or commence the competent practice of podiatric medicine with reasonable skill and safety to patients. In a proceeding under this subsection, neither the record of proceedings nor the orders entered by the board may be used against a podiatrist or applicant in any other proceeding.
2. In addition to ordering a physical or mental examination or a ~~chemical dependency~~ an addiction evaluation, the board may, notwithstanding any law to the contrary, obtain medical data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that the podiatrist or applicant falls within the provisions of subdivision l or q of subsection 1 of section 43-05-16. The medical data may be requested from a provider, an insurance company, or a government agency. A provider, insurance company, or government agency shall comply with a written request of the board under this section and is not liable in any action for damages for releasing the data requested by the board if the data are released in accordance with a written request under this section unless the information is false and the provider giving the information knew or had reason to believe the information was false.

<sup>100</sup> **SECTION 15. AMENDMENT.** Subsection 3 of section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

3. 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~~ addiction evaluation.

**SECTION 16. AMENDMENT.** Subsection 3 of section 50-25.1-16 of the North Dakota Century Code is amended and reenacted as follows:

3. If a report alleges a pregnant woman's use of a controlled substance for a nonmedical purpose, the department or its designee shall immediately initiate an appropriate assessment and offer services indicated under the circumstances. Services offered may include a referral for ~~chemical dependency~~ addiction assessment, a referral for ~~chemical dependency~~ substance use disorder treatment if recommended, or a referral for prenatal care. The department or its designee may also take any appropriate action under chapter 25-03.1.

**SECTION 17. AMENDMENT.** Section 50-25.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-18. Prenatal exposure to alcohol abuse - Reporting requirements.**

1. An individual required to report under section 50-25.1-03 who has knowledge of or reasonable cause to suspect that a woman is pregnant and has abused alcohol after the woman knows of the pregnancy may:
  - a. Arrange for a ~~chemical dependency~~ addiction assessment conducted by a licensed treatment program and confirm that the recommendations indicated by the assessment are followed; or
  - b. Immediately report the circumstances to the department if the knowledge or suspicion is derived from information received by that individual in that individual's official or professional capacity.
2. An individual may make a voluntary report if the individual has knowledge of or reasonable cause to suspect that a woman is pregnant and has abused alcohol during the pregnancy.
3. If the woman is referred for a ~~chemical dependency~~ addiction assessment under subdivision a of subsection 1 and fails to obtain an assessment or refuses to comply with the recommendations of the assessment, an individual required to report under section 50-25.1-03 who has knowledge of the failure to obtain the assessment or refusal to comply with recommendations of the assessment shall make a report to the department.
4. If a report alleges a pregnant woman has abused alcohol, the department or its designee shall immediately initiate an appropriate assessment and offer services indicated under the circumstances. Services offered may include a referral for ~~chemical dependency~~ addiction assessment, a referral for ~~chemical dependency~~ substance use disorder treatment, if recommended, or a

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<sup>100</sup> Section 43-17.1-06 was also amended by section 9 of Senate Bill No. 2094, chapter 354.

referral for prenatal care. The department or its designee may also take any appropriate action under chapter 25-03.1.

5. A report and assessment under this section is not required if the pregnant woman voluntarily enters treatment in a licensed treatment program. If the pregnant woman does not complete voluntary treatment or fails to follow treatment recommendations, an individual required to report under section 50-25.1-03 who has knowledge of the failure to complete voluntary treatment or failure to follow treatment recommendations shall make a report as required by this section.
6. A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the nature and extent of the abuse of alcohol, any health risk associated with the abuse of alcohol, and the name and address of the individual making the report.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 226

### HOUSE BILL NO. 1453

(Representatives Skroch, Buffalo, Sanford, Vigesaa)  
(Senators Heckaman, Hogan, Mathern, Poolman)

AN ACT to amend and reenact sections 25-03.1-02, 25-03.1-07, 25-03.1-17, 25-03.1-21, and 25-03.1-30 of the North Dakota Century Code, relating to civil commitment procedures and alternative treatment orders; and to provide for a legislative management study.

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

<sup>101</sup> **SECTION 1. AMENDMENT.** Section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **25-03.1-02. Definitions.**

In this chapter, unless the context requires otherwise:

1. "Advanced practice registered nurse" means an individual who is licensed as an advanced practice registered nurse under chapter 43-12.1 within the role of certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree in psychiatric and mental health nursing from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing. This chapter does not expand the scope of practice of an advanced practice registered nurse beyond the scope of practice established by the state board of nursing.
2. "Alternative treatment order" means an involuntary outpatient order for a treatment program, other than hospitalization, which may include treatment with a prescribed medication.
3. "Chemically dependent person" or "person who is chemically dependent" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
4. "Consent" means voluntary permission ~~that is~~ based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.
5. "Court" means, except when otherwise indicated, the district court serving the county in which the respondent resides.
6. "Department" means the department of human services.
7. "Director" means the director of a treatment facility or the director's designee.

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<sup>101</sup> Section 25-03.1-02 was also amended by section 7 of Senate Bill No. 2240, chapter 225.

8. "Expert examiner" means a licensed physician, physician assistant, psychiatrist, psychologist trained in a clinical program, advanced practice registered nurse, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment.
9. "Independent expert examiner" means a licensed physician, physician assistant, psychiatrist, psychologist trained in a clinical program, advanced practice registered nurse, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment.
10. "Magistrate" means the judge of the appropriate district or juvenile court or a judge assigned by the presiding judge of the judicial district.
11. "Mental health professional" means:
  - a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
  - b. A social worker with a master's degree in social work from an accredited program.
  - c. An advanced practice registered nurse.
  - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of an expert examiner.
  - e. A licensed addiction counselor.
  - f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.
  - g. A physician assistant.
12. "Mentally ill person" or "person who is mentally ill" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. The term does not include an individual with an intellectual disability of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who is intellectually disabled may also be a person who is mentally ill. Chemical dependency does not per se constitute mental illness, although a person who is chemically dependent may also be a person who is mentally ill.
13. "Person requiring treatment" means a person who is mentally ill or a person who is chemically dependent, and there is a reasonable expectation that if the individual is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that individual, others, or property.

14. "Physician assistant" means an individual licensed to practice as a physician assistant under chapter 43-17, who is authorized by the North Dakota board of medicine to practice in the field of psychiatry, holds a certification in psychiatry approved by the board, and is practicing under the supervision of a psychiatrist licensed to practice medicine in this state. This chapter does not expand the scope of practice of a physician assistant beyond the scope of practice authorized by the North Dakota board of medicine.
15. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or 50-31.
16. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.
17. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
18. "Qualified service organization" means a person that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, ~~that person~~ is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.
19. "Respondent" means an individual subject to petition for involuntary treatment.
20. "Serious risk of harm" means a substantial likelihood of:
  - a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
  - b. Killing or inflicting serious bodily harm on another individual or inflicting significant property damage, as manifested by acts or threats;
  - c. Substantial deterioration in physical health ~~or~~, substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or
  - d. Substantial deterioration in mental health which would predictably result in ~~dangerousness~~danger to that individual, others, or property, based upon ~~evidence~~:
    - (1) Evidence of objective facts to establish the loss of cognitive or volitional control over the individual's thoughts or actions; ~~or based upon acts~~
    - (2) Acts, or threats, or patterns in the individual's treatment history; ~~the individual's current condition~~; and other relevant factors, including the effect of the individual's mental condition on the individual's ability to consent.
21. "Substantial likelihood" may take into account an individual's history and recent behavior.

22. "Superintendent" means the state hospital superintendent or the superintendent's designee.
- 22-23. "Third-party payer" means a person that pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person providing audit or evaluation activities for the third-party payer.
- 23-24. "Treatment facility" or "facility" means any hospital, including the state hospital at Jamestown, or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to individuals who are a person who is mentally ill or a person who is chemically dependent.

**SECTION 2. AMENDMENT.** Section 25-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-07. Involuntary admission standards.**

An individual may not be involuntarily admitted under this chapter to the state hospital or another treatment facility only if unless it is determined ~~that~~ the individual is a person requiring treatment.

**SECTION 3. AMENDMENT.** Section 25-03.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-17. Involuntary treatment - Right to preliminary hearing.**

1. A respondent who is in custody under section 25-03.1-25 and who is alleged to be a mentally ill person or to be a person who is both mentally ill and chemically dependent is entitled to a preliminary hearing.
  - a. At the preliminary hearing the ~~magistrate court~~ shall review the medical report. During the hearing the court shall allow the petitioner and the respondent ~~must be afforded~~ an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The ~~magistrate court~~ may receive evidence that would otherwise be inadmissible at a treatment hearing.
  - b. At the conclusion of the hearing, if the court does not find probable cause to believe ~~that~~ the individual is a person requiring treatment, ~~the petition must be dismissed. The individual must be ordered discharged from the court shall dismiss the petition and order the respondent be discharged from the~~ treatment facility if that individual has been the respondent was detained before the hearing.
2. If the court finds probable cause to believe ~~that~~ the respondent is a person requiring treatment, ~~it the court~~ shall consider less restrictive alternatives to involuntary detention and treatment.
  - a. The court may ~~then~~ order the respondent to undergo up to fourteen days' treatment under a less restrictive alternative or, if it the court finds ~~that~~ alternative treatment is only in the best interests of the respondent or

others, ~~it~~ the court shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility.

- b. The court shall specifically state to the respondent and give written notice that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a treatment hearing as required by this chapter.

**SECTION 4. AMENDMENT.** Section 25-03.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-21. Involuntary treatment order - Alternatives to hospitalization - Noncompliance with alternative treatment order - Emergency detention by certain professionals - Application for continuing treatment order.**

1. ~~Before making its~~ the court makes a decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility. If the court finds that a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent ~~harm or injuries which the individual may inflict upon the individual or others~~ serious risk of harm, the court shall order the respondent to receive whatever treatment, other than hospitalization, is appropriate for a period of ninety days.
2. If the respondent is not complying with the alternative treatment order or the alternative treatment has not been sufficient to prevent ~~harm or injuries that the individual may be inflicting upon the individual or others~~ serious risk of harm, the department, a representative of the treatment program involved in the alternative treatment order, the petitioner's retained attorney, or the state's attorney may apply to the court or to the district court of a different judicial district in which the respondent is located to modify the alternative treatment order. The court shall hold a hearing within seven days after the application is filed. Based upon the evidence presented at hearing and other available information, the court may:
  - a. Continue the alternative treatment order;
  - b. Consider other alternatives to hospitalization, modify the court's original order, and direct the ~~individual to~~ respondent undergo another program of alternative treatment for the remainder of the ninety-day period; or
  - c. Enter a new order directing that ~~the individual~~ the respondent be hospitalized until discharged from the hospital under section 25-03.1-30. If the ~~individual~~ respondent refuses to comply with this hospitalization order, the court may direct a peace officer to take the ~~individual~~ respondent into protective custody and transport the respondent to a treatment facility.
3. If a peace officer, physician either in person or directing an emergency medical services professional, ~~psychiatrist, physician assistant, clinical psychologist, advanced practice registered nurse,~~ or any mental health professional reasonably believes that the respondent is not complying with an order for alternative treatment, that the alternative treatment is not sufficient to prevent serious risk of harm ~~or injuries to the respondent or others~~, and that considerations of time and safety do not allow intervention by a court, the



designated professional may cause the respondent to be taken into custody and detained at a treatment facility as provided in subsection 3 of section 25-03.1-25 and, within twenty-four hours, shall file a notice with the court stating the circumstances and factors of the case. The state hospital or public treatment facility ~~shall~~ immediately shall accept, if appropriately screened and medically stable, and a private treatment facility may accept, the respondent on a provisional basis. The superintendent or director shall require an immediate examination of the respondent and, within twenty-four hours after admission, shall ~~either~~ release the respondent subject to the conditions of the original order or file a notice with the court stating in detail the circumstances and factors of the case. The court ~~shall~~, within forty-eight hours of receipt of the notice of the superintendent or director, after a hearing and based on the evidence presented and other available information, shall:

- a. Release the ~~individual respondent~~ from hospitalization and continue the alternative treatment order;
  - b. Consider other alternatives to hospitalization, modify ~~its~~ the original order of the court, and direct the ~~individual to respondent~~ undergo another program of alternative treatment for the remainder of the commitment period; or
  - c. Enter a new order directing ~~that~~ the respondent remain hospitalized until discharged from the hospital under section 25-03.1-30.
4. If, at the date of expiration of an order of alternative treatment, it is believed ~~that~~ an individual continues to require treatment, a petition for a determination that the individual continues to be a person requiring treatment may be filed with the court where the individual is located.

**SECTION 5. AMENDMENT.** Section 25-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-30. Discharge of hospitalized patient - Transfer to alternative treatment - Termination of alternative treatment.**

1. The superintendent or director ~~may~~ at any time may discharge a voluntarily hospitalized patient who is clinically suitable for discharge.
2. The superintendent or director shall discharge a patient hospitalized by court order ~~whenif~~ the patient's mental condition is such that the patient no longer is a person requiring treatment.
3. If a patient discharged under subsection 1 or 2 has been hospitalized by a court order, or if court proceedings are pending, the treatment facility shall notify the court ~~must be notified of the discharge by the treatment facility.~~
4. A person responsible for providing treatment, other than hospitalization, to an individual ordered to undergo a program of alternative treatment may terminate the alternative treatment if the patient is clinically suitable for termination of treatment. The person shall terminate the alternative treatment ~~whenif~~ the patient no longer is a person requiring treatment and shall notify the court upon that termination.
5. If, upon the discharge of a hospitalized patient or the termination of alternative treatment of an individual under this chapter, the individual would benefit from further treatment, the hospital or provider of alternative treatment shall offer

appropriate treatment on a voluntary basis or shall aid the individual to obtain treatment from another source on a voluntary basis.

- a. With the individual's consent, the superintendent or director shall notify the appropriate community agencies or persons of the release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations ~~whose~~ the function of which is to assist mentally ill or chemically dependent persons, and the individual's physician.
  - b. The agencies and persons notified of the individual's release shall report to the facility that initial contact with the individual has been accomplished.
6. If, before expiration of an initial treatment order, the superintendent or director determines ~~that~~ a less restrictive form of treatment ~~would be~~ is more appropriate for a patient hospitalized by court order, the superintendent or director may petition the court ~~which~~ that last ordered the patient's hospitalization to modify ~~its~~ the order of the court. The petition must contain statements setting forth the reasons for the determination ~~that~~ the patient continues to ~~require~~ be a person requiring treatment, the reasons for the determination ~~that~~ a less restrictive form of treatment ~~would be~~ is more appropriate for the patient, and describing the recommended treatment program. If the patient consents, ~~the court may~~, without a hearing, the court may modify its the treatment order of the court by directing the patient to undergo the agreed treatment program for the remainder of the treatment order. The patient must be given an opportunity to protest the discharge and modification of treatment order and to receive a hearing on the merits of the protest.

## **SECTION 6. LEGISLATIVE MANAGEMENT STUDY - REPORT - BEHAVIORAL HEALTH CIVIL COMMITMENT AND INTERVENTION BEFORE VIOLENCE.**

1. During the 2019-20 interim, the legislative management shall consider studying the state's civil commitment laws and procedures under chapters 25-03.1 and 25-03.2 and the behavioral health and civil justice systems to determine whether:
  - a. Steps could be taken to prevent and to decrease the incidence of violence committed by persons who are mentally ill, including the temporary removal of firearms;
  - b. Law enforcement has the authority to confiscate a weapon from an individual who appears to be at serious risk of harm and whether this is applied uniformly by law enforcement across the state;
  - c. Our behavioral health and civil justice systems could take steps to be more effective in intervening in the early stages of an individual's mental illness to treat the illness and avoid violence and possible contact with law enforcement; and
  - d. There is a lack of uniformity in how early intervention and civil commitment is implemented across the state, and to the extent there may be a lack of uniformity, to what this lack of uniformity is attributable to and whether education and training of stakeholders may help facilitate more uniformity.

2. If the legislative management conducts this study, the judicial branch shall provide the legislative management with court data necessary to conduct the study, including data from each of the counties in the state regarding civil commitment proceedings and outcomes.
3. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 227

### SENATE BILL NO. 2087

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact section 25-03.3-04 of the North Dakota Century Code, relating to record retention of civil commitment of sexually dangerous individuals.

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

**SECTION 1. AMENDMENT.** Section 25-03.3-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **25-03.3-04. Retention of records.**

Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by chapters 12.1-20 and 12.1-27.2 must be retained for ~~fifty~~twenty-five years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter. If the subject of a case file or court record has died before the expiration of the twenty-five-year period, the official, department, or agency possessing the case files and records shall maintain the case files and records in accordance with the case file and records retention policies of that official, department, or agency. For purposes of this section, "adult and juvenile case files" mean the subject's medical, psychological, and treatment clinical assessments, evaluations, and progress reports; offenses in custody records; case notes; and criminal investigation reports and records.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 228

### HOUSE BILL NO. 1517

(Representatives Schneider, Adams, Eidson, Hager, Holman)  
(Senator Hogan)

AN ACT to create and enact a new section to chapter 25-04 and a new section to chapter 50-06 of the North Dakota Century Code, relating to program management for residents of the life skills and transition center and regional crisis support services for individuals with an intellectual or developmental disability; to amend and reenact section 25-04-02.1 and subsection 4 of section 50-06-37 of the North Dakota Century Code, relating to accreditation of life skills and transition center and assessment of intellectual or developmental disabilities; and to provide for a report to the legislative management.

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

**SECTION 1. AMENDMENT.** Section 25-04-02.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **25-04-02.1. Accreditation of life skills and transition center.**

The department of human services shall request appropriations and resources sufficient to ensure maintenance of the life skills and transition center's accreditation by the accreditation council on services for people with developmental disabilities and certification by the health care financing administration ~~and, if deemed necessary,~~ by similar accrediting and certifying organizations and agencies possessing standards applicable to an individual with a developmental disability and disciplines needed to provide quality services to individuals served.

**SECTION 2.** A new section to chapter 25-04 of the North Dakota Century Code is created and enacted as follows:

##### **Program management for a resident.**

The department shall ensure active program management is maintained for eligible individuals residing at the life skills and transition center.

<sup>102</sup> **SECTION 3. AMENDMENT.** Subsection 4 of section 50-06-37 of the North Dakota Century Code is amended and reenacted as follows:

- ~~4. The department shall contract with a team of support intensity scale assessors by September 1, 2011. The team shall begin assessing immediately the identified client pilot group identified by the consultant contracted in subsection 2. conduct the standardized assessment of eligible individuals residing at the life skills and transition center.~~

**SECTION 4.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

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<sup>102</sup> Section 50-06-37 was also amended by section 1 of Senate Bill No. 2247, chapter 397.

**Regional crisis support services for individuals with an intellectual or developmental disability.**

The department shall establish regional crisis support services for individuals with an intellectual or developmental disability. The regional crisis support services teams shall provide timely crisis assistance to individuals with an intellectual or developmental disability.

**SECTION 5. REPORT TO LEGISLATIVE MANAGEMENT - SYSTEM OF SERVICES FOR INDIVIDUALS WITH AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY.** The department of human services shall provide the legislative management a status report on:

1. The ongoing work of the department to improve community provider capacity, including any barriers encountered and policy review; and
2. The system of services for individuals with an intellectual or developmental disability, including a review of the existing service system, funding, and unmet needs.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 229

### HOUSE BILL NO. 1259

(Representatives Satrom, Grueneich, C. Johnson, Jones, Paulson, Schauer)  
(Senator Wanzek)

AN ACT to create and enact a new section to chapter 25-13 of the North Dakota Century Code, relating to the misrepresentation of a pet as a service animal; 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:

#### **Service animal - Misrepresentation - Penalty.**

An individual is guilty of an infraction if the individual, in an attempt to gain admission to a public place under this chapter or obtain a reasonable housing accommodation under section 47-16-07.5, knowingly makes a false claim that a pet is a service animal.

Approved April 17, 2019

Filed April 18, 2019

# INSURANCE

## CHAPTER 230

### HOUSE BILL NO. 1138

(Representatives Keiser, O'Brien)

AN ACT to amend and reenact subsection 2 of section 26.1-02-27 of the North Dakota Century Code, relating to annual privacy notices.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 26.1-02-27 of the North Dakota Century Code is amended and reenacted as follows:

2. a. The commissioner shall adopt rules necessary to carry out this section.
  - b-a. 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".
  - e-b. Notwithstanding subdivision b-a and subject to the exceptions, including the affiliate sharing exception provided for in the national association of insurance commissioners' model regulation, the rules may prohibit the disclosure of nonpublic personal health and financial information concerning an individual unless an authorization is obtained from the individual whose nonpublic personal health and financial information is sought to be disclosed.
  - c. The rules may not require an insurance company, nonprofit health service corporation, or health maintenance organization to provide an annual privacy notice if the insurance company, nonprofit health service corporation, or health maintenance organization:
    - (1) Complies with nonaffiliated third party sharing rules adopted by the commissioner; and
    - (2) Has not changed the insurance company's, nonprofit health service corporation's, or health maintenance organization's policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent notice sent to consumers.

Approved March 20, 2019

Filed March 21, 2019



## CHAPTER 231

### HOUSE BILL NO. 1139

(Representative Keiser)  
(Senator Klein)

AN ACT to create and enact section 26.1-02-31 of the North Dakota Century Code, relating to confidentiality of insurance department records; and to amend and reenact section 26.1-02-30 of the North Dakota Century Code, relating to confidentiality of consumer assistance records.

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

**SECTION 1. AMENDMENT.** Section 26.1-02-30 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-02-30. Consumer assistance records - ~~Exempt~~Confidential.**

1. Personal, financial, or health information related to requests for consumer assistance received by the commissioner is ~~an exempt~~ confidential record as defined in section 44-04-17.1.
2. As used in this section, "personal, financial, or health information" means information that would reveal:
  - a. An individual's personal health condition, disease, or injury;
  - b. The existence, nature, source, or amount of an individual's personal income;
  - c. The existence, nature, source, or amount of an individual's personal expenses;
  - d. Records of or relating to an individual's personal financial transactions of any kind;
  - e. The existence, identification, nature, or value of an individual's personal assets, liabilities, or net worth;
  - f. A history of an individual's personal medical diagnosis or treatment;
  - g. The existence, identification, nature, value, or content of an individual's coverage or status under any insurance policy;
  - h. An individual's personal contractual rights or obligations; or
  - i. Any social security number, date of birth, file number, bank account number, or other number used for identification of an individual or any account in which an individual has a personal financial interest.

3. The name of a regulated entity that is the subject of a complaint or inquiry; is not "personal, financial, or health information"; and is not subject to the restrictions in this section.

**SECTION 2.** Section 26.1-02-31 of the North Dakota Century Code is created and enacted as follows:

**26.1-02-31. Confidentiality of complaint information - Exceptions.**

1. A document, material, or other information, including the contents of a claim file, which is provided to, obtained by, created by, or disclosed to the commissioner in response to a consumer assistance request or a complaint is confidential and not subject to section 44-04-18, a subpoena to the department, or discovery request or admissible as evidence in a private civil action. However, the commissioner may disclose the subject matter of the assistance request or complaint, provide a general description of the disposition of the request or complaint, and use the document, material, or other information for a regulatory or legal action brought as a part of the official duties of the commissioner.
2. A privilege or claim of confidentiality in the document, material, or information is not waived as a result of disclosure to the commissioner under this section or as a result of providing or disclosing information to the commissioner.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 232

### HOUSE BILL NO. 1137

(Representatives Keiser, Bosch, O'Brien)  
(Senator Burckhard)

AN ACT to create and enact two new sections to chapter 26.1-02 of the North Dakota Century Code, relating to electronic delivery of insurance notices and documents; and to repeal section 26.1-39-26 of the North Dakota Century Code, relating to electronic delivery of property and casualty insurance notices and documents.

#### 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:

##### Electronic notices and documents.

1. As used in this section:
  - a. "Delivered by electronic means" includes:
    - (1) Delivery to an electronic mail address at which a party has consented to receive notices or documents; or
    - (2) Posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or other electronic device, together with separate notice to a party directed to the electronic mail address at which the party has consented to receive notice of the posting.
  - b. "Party" means a recipient of a notice or document required as part of an insurance transaction, including an applicant, insured, or policyholder.
2. Subject to the requirements of this section, any notice to a party or any other document required under applicable law in an insurance transaction or any other document that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means if the notice or document meets the requirements of chapter 9-16.
3. Delivery of a notice or document in accordance with this section is equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; or registered mail.
4. A notice or document may be delivered by electronic means by an insurer to a party under this section if the following requirements are met:
  - a. The party has affirmatively consented to the electronic method of delivery and has not withdrawn the consent.
  - b. The party, before giving consent, is provided with a clear and conspicuous statement informing the party of the following:

- (1) The right of the party at any time to withdraw consent to have a notice or document delivered by electronic means and any conditions or consequences imposed if consent is withdrawn.
  - (2) The means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means.
  - (3) The procedure a party shall follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address.
- c. The party:
  - (1) Before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and
  - (2) Consents electronically, or confirms consent electronically, in a manner that demonstrates the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent.
- d. After the party has given consent, if a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, the insurer shall provide the party with a statement of the revised hardware and software requirements which complies with subdivision b.
- e. The insurer has provided a copy of the notice or document to the party's insurance producer by electronic means or regular mail.
5. This section does not affect requirements related to content or timing of any notice or document required under applicable law.
6. If a provision of this title or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the electronic method used provides for verification or acknowledgment of receipt.
7. The legal effectiveness, validity, or enforceability of any insurance contract or policy executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with paragraph 2 of subdivision c of subsection 4.
8. A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective.
9. A withdrawal of consent by a party is effective within a reasonable time, not to exceed five days, after receipt of the withdrawal by the insurer.
10. This section does not apply to a notice or document delivered before August 1, 2019, by an insurer in an electronic form to a party that, before that

date, has consented to receive notices or documents in an electronic form otherwise allowed by law.

11. If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before August 1, 2019, and pursuant to this section, an insurer intends to deliver additional notices or documents to the party in an electronic form, then before delivering those additional notices or documents electronically, the insurer shall provide the insured with a statement describing:
  - a. The notices or documents that must be delivered by electronic means under this section which were not previously delivered electronically; and
  - b. The party's right to withdraw consent to have notices or documents delivered by electronic means.
12. Except as otherwise provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording may qualify as a notice or document delivered by electronic means for purposes of this section.
13. If a provision of this title or applicable law requires a signature, notice, or document to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the individual authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice, or document.
14. This section may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. ch. 7001 et seq.].

**SECTION 2.** A new section to chapter 26.1-02 of the North Dakota Century Code is created and enacted as follows:

**Posting policy on internet.**

1. An insurance policy and an endorsement that does not contain personally identifiable information may be mailed, delivered, or posted on the insurer's website. If the insurer elects to post an insurance policy and an endorsement on the insurer's website in lieu of mailing or delivering the policy and endorsement to the insured, the insurer shall comply with the following conditions:
  - a. The policy and an endorsement must be accessible to the insured and producer of record and remain that way while the policy is in force;
  - b. After the expiration of the policy, the insurer shall archive the expired policy and endorsement for a period of five years or other period required by law, and make the policy and endorsement available upon request;
  - c. The policy and endorsement must be posted in a manner that enables the insured and producer of record to print and save the policy and endorsement using a program or application that is widely available on the internet and free to use;

- d. The insurer shall provide the following information in, or simultaneous with, each declaration page provided at the time of issuance of the initial policy and any renewals of the policy:
    - (1) A description of the exact policy and endorsement form purchased by the insured;
    - (2) A description of the insured's right to receive, upon request and without charge, a paper copy of the policy and endorsement by mail; and
    - (3) The internet address at which the policy and endorsement are posted;
  - e. The insurer, upon an insured's request and without charge, shall mail a paper copy of the policy and endorsement to the insured; and
  - f. The insurer shall provide notice, in the format preferred by the insured, of any change to the forms or endorsement; the insured's right to obtain, upon request and without charge, a paper copy of the forms or endorsement; and the internet address at which the forms or endorsement are posted.
2. This section does not affect the timing or content of any disclosure or document required to be provided or made available to any insured under applicable law.

**SECTION 3. REPEAL.** Section 26.1-39-26 of the North Dakota Century Code is repealed.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 233

### HOUSE BILL NO. 1142

(Representative Keiser)  
(Senator Klein)

AN ACT to create and enact a new section to chapter 26.1-02 of the North Dakota Century Code, relating to interpretation of the state's insurance laws.

#### **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:

#### **Rules of interpretation.**

In addition to the rules of interpretation under chapters 1-01 and 1-02, in interpreting this title, a person, including the courts of this state, shall apply the Constitution of the United States of America and the Constitution of North Dakota, this code, and the common law of this state. A person may not apply, give weight to, or afford recognition to, the American Law Institute's "Restatement of the Law, Liability Insurance" as an authoritative reference regarding interpretation of North Dakota laws, rules, and principles of insurance law.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 234

### SENATE BILL NO. 2077

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact section 26.1-02.1-05 of the North Dakota Century Code, relating to the penalties and restitution for insurance fraud; to provide a penalty; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 26.1-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-02.1-05. Penalties - Restitution.**

1. a. A violation of section 26.1-02.1-02.1 is:
  - (1) A class A felony if the value of any property or services retained exceeds fifty thousand dollars;
  - (2) A class B felony if the value of any property or services ~~attempted to be obtained~~the act associated with the fraud or directly related to the fraud exceeds fifty thousand dollars;
  - (3) A class B felony if the value of any property or services retained exceeds ten thousand dollars but does not exceed fifty thousand dollars;
  - (4) A class C felony if the value of any property or services ~~attempted to be obtained~~the act associated with the fraud or directly related to the fraud exceeds ten thousand dollars but does not exceed fifty thousand dollars;
  - (5) A class C felony if the value of any property or services retained exceeds one thousand dollars but does not exceed ten thousand dollars; and
  - (6) A class A misdemeanor in all other cases.
- b. For purposes of this section, the value of any property and services must be determined in accordance with section 12.1-23-05.
2. ~~In the event that~~ If a practitioner is adjudicated guilty of a violation of section 26.1-02.1-02.1, the court shall notify the appropriate licensing authority of this state of the adjudication. The appropriate licensing authority shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against the practitioner.
3. In addition to any other punishment, a person ~~who~~that violates section 26.1-02.1-02.1 must be ordered to make restitution to the insurer or to any



other person for any financial loss sustained as a result of the violation of section 26.1-02.1-02.1. The court shall determine the extent and method of restitution.

4. A prosecution for any felony offense under chapter 26.1-02.1 must be commenced within three years after the date of discovery of the fraud.
5. A prosecution for any misdemeanor or infraction offense under chapter 26.1-02.1 must be commenced within two years after the date of discovery of the fraud.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 235

### SENATE BILL NO. 2076

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact chapter 26.1-10.3 of the North Dakota Century Code, relating to corporate governance; and to provide a penalty.

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

**SECTION 1.** Chapter 26.1-10.3 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-10.3-01. Definitions.**

As used in this chapter:

1. "Corporate governance annual disclosure" means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this chapter.
2. "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in chapter 26.1-10.
3. "Insurer" has the meaning provided in section 26.1-10-01.
4. "Own risk and solvency assessment summary report" means the report filed in accordance with chapter 26.1-10.2.

##### **26.1-10.3-02. Disclosure requirement.**

1. An insurer, or the insurance group of which the insurer is a member, no later than June first of each calendar year, shall submit to the commissioner a corporate governance annual disclosure that contains the information described in subsection 2 of section 26.1-10.3-04. Notwithstanding any request from the commissioner made pursuant to subsection 3, if the insurer is a member of an insurance group, the insurer shall submit the report required by this section to the commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent financial analysis handbook adopted by the national association of insurance commissioners.
2. The corporate governance annual disclosure must include a signature of the insurer or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer has implemented the corporate governance practices and that a copy of the disclosure has been provided to the insurer's board of directors or the appropriate committee of the board of directors.
3. An insurer not required to submit a corporate governance annual disclosure under this section shall do so upon the commissioner's request.

4. For purposes of completing the corporate governance annual disclosure, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured the system of corporate governance of the insurer or insurance group. The insurer or insurance group is encouraged to make the corporate governance annual disclosure disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, the insurer or insurance group shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.
5. The review of the corporate governance annual disclosure and any additional requests for information must be made through the lead state as determined by the procedures within the most recent financial analysis handbook referenced in subsection 1.
6. An insurer providing information substantially similar to the information required by this chapter in other documents provided to the commissioner, including proxy statements filed in conjunction with form b requirements, or other state or federal filings provided to the commissioner are not required to duplicate that information in the corporate governance annual disclosure, but shall cross-reference the document in which the information is included.

#### **26.1-10.3-03. Rules and regulations.**

The commissioner may adopt reasonable rules necessary for the implementation of this chapter.

#### **26.1-10.3-04. Contents of corporate governance annual disclosure.**

1. The insurer or insurance group has discretion over the responses to the corporate governance annual disclosure inquiries, if the corporate governance annual disclosure contains the material information necessary to permit the commissioner to gain an understanding of the insurer's or group's corporate governance structure, policies, and practices. The commissioner may request additional information the commissioner deems material and necessary to provide the commissioner with a clear understanding of the corporate governance policies, the reporting or information system or controls implementing those policies.
2. Notwithstanding subsection 1, the corporate governance annual disclosure must be prepared according to rules adopted by the commissioner. Documentation and supporting information must be maintained and made available upon examination or upon request of the commissioner.

#### **26.1-10.3-05. Confidentiality.**

1. Documents, materials, or other information, including the corporate governance annual disclosure, in the possession or control of the insurance department which are obtained by, created by, or disclosed to the

commissioner or any other person under this chapter, are recognized by this state as being proprietary and to contain trade secrets. All documents, materials, or other information is confidential by law and privileged, is not subject to section 44-04-18, 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 official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer. This section may not be construed to require written consent of the insurer before the commissioner may share or receive confidential documents, materials, or other corporate governance annual disclosure-related information pursuant to subsection 3 to assist in the performance of the commissioner's regular duties.

2. Neither the commissioner nor any person that received documents, materials, or other corporate governance annual disclosure-related information, through examination or otherwise, while acting under the authority of the commissioner, or with which documents, materials, or other information are shared pursuant to this chapter may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection 1.
3. In order to assist in the performance of the commissioner's regulatory duties, the commissioner:
  - a. May, upon request, share documents, materials, or other corporate governance annual disclosure-related information, including the confidential and privileged documents, materials, or information subject to subsection 1, including proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in section 26.1-10-06.1, with the national association of insurance commissioners, and with third-party consultants pursuant to section 26.1-10.3-06, if the recipient agrees in writing to maintain the confidentiality and privileged status of the corporate governance annual disclosure-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and
  - b. May receive documents, materials, or other corporate governance annual disclosure-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret information or documents, from regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in chapter 26.1-10, and from the national association of insurance commissioners, and shall maintain as confidential or privileged any documents, materials, 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.
4. The sharing of information and documents by the commissioner pursuant to this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

5. A waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other corporate governance annual disclosure-related information does not occur as a result of disclosure of corporate governance annual disclosure-related information or documents to the commissioner under this section or as a result of sharing as authorized in this chapter.

**26.1-10.3-06. National association of insurance commissioners and third-party consultants.**

1. The commissioner may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the corporate governance annual disclosure and related information or the insurer's compliance with this chapter.
2. Any persons retained under subsection 1 are under the direction and control of the commissioner and shall act in a purely advisory capacity.
3. The national association of insurance commissioners and third-party consultants are subject to the same confidentiality standards and requirements as the commissioner.
4. As part of the retention process, a third-party consultant shall verify to the commissioner, with notice to the insurer, that the consultant is free of a conflict of interest and has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this chapter.
5. A written agreement with the national association of insurance commissioners or a third-party consultant, or both, governing sharing and use of information provided pursuant to this chapter must contain the following provisions and expressly require the written consent of the insurer before making public information provided under this chapter:
  - a. Specific procedures and protocols for maintaining the confidentiality and security of corporate governance annual disclosure-related information shared with the national association of insurance commissioners or a third-party consultant pursuant to this chapter.
  - b. Procedures and protocols for sharing by the national association of insurance commissioners only with other state regulators from states in which the insurance group has domiciled insurers. The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the corporate governance annual disclosure-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.
  - c. A provision specifying that ownership of the corporate governance annual disclosure-related information shared with the national association of insurance commissioners or a third-party consultant remains with the insurance department and the national association of insurance commissioner's or third-party consultant's use of the information is subject to the direction of the commissioner.

- d. A provision that prohibits the national association of insurance commissioners or a third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed.
- e. A provision requiring the national association of insurance commissioners or third-party consultant to provide prompt notice to the commissioner and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's corporate governance annual disclosure-related information.
- f. A requirement that the national association of insurance commissioners or a third-party consultant consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the national association of insurance commissioners or a third-party consultant pursuant to this chapter.

#### **26.1-10.3-07. Sanctions.**

Any insurer failing, without just cause, to timely file the corporate governance annual disclosure as required in this chapter is required, after notice and hearing, to pay a penalty of five hundred dollars for each day's delay, to be recovered by the commissioner and the penalty so recovered shall be paid into the general fund. The maximum penalty under this section is one hundred thousand dollars. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 236

### HOUSE BILL NO. 1176

(Representatives Monson, Kreidt, Vigesaa)  
(Senators Klein, Luick, Rust)

AN ACT to amend and reenact sections 26.1-13-01, 26.1-13-05, 26.1-13-07, 26.1-13-10, 26.1-13-11, 26.1-13-12, 26.1-13-14, 26.1-13-15, 26.1-13-19, 26.1-13-21, 26.1-13-23, 26.1-13-28, 26.1-13-29, and 26.1-13-34 and subsection 7 of section 26.1-42.1-02 of the North Dakota Century Code, relating to county mutual insurance companies; and to repeal sections 26.1-13-20, 26.1-13-22, 26.1-13-24, 26.1-13-25, 26.1-13-26, 26.1-13-27, 26.1-13-31, 26.1-13-32, and 26.1-13-33 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 ~~thirty~~forty counties in this state, ~~who~~which collectively own property of not less than ~~one~~four hundred thousand dollars in value which ~~they~~the persons desire to insure; or any number of persons, not less than twenty-five, residing in any one county in this state, ~~who~~which collectively own property of not less than ~~twenty-five~~one hundred thousand dollars in value which ~~they~~the persons desire to insure. A county mutual insurance company organized under this chapter shall maintain a surplus of at least ~~fifty~~two hundred thousand dollars.

**SECTION 2. AMENDMENT.** Section 26.1-13-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-13-05. Bylaws - Contents.**

A county mutual insurance company may make bylaws, not inconsistent with the constitution or laws of this state, necessary to provide for the management of ~~its~~the company's affairs in accordance with this chapter and to prescribe the duties of ~~its~~the company's officers and ~~fix their compensation~~. Bylaws may be repealed or amended in the manner provided in this chapter.

**SECTION 3. AMENDMENT.** Section 26.1-13-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-13-07. Directors - Number - Election - Powers and duties.**

The general management of the business of a county mutual insurance company must be vested in a board of directors consisting of ~~not less~~no fewer than five members nor more than fifteen members. The members of the board must be elected by the members of the company at the annual meeting in the manner provided by the bylaws of the company and, if it is ~~not otherwise provided~~, by ballot. As nearly as may

be, one-third of the members of the first board must be elected for one year, one-third for two years, and one-third for three years, and in all future elections ~~subsequent thereto~~, except in the case of elections to fill vacancies on the board, members must be elected for terms of three years. Each director holds office until a successor is elected and qualified. In the election of the members of the first board, each incorporator is entitled to one vote, and at every subsequent election each member of the company is entitled to one vote per policy. The board may exercise the usual powers and shall perform the usual duties of a board of directors of a corporation generally.

**SECTION 4. AMENDMENT.** Section 26.1-13-10 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-10. Members of county mutual company - Policyholders - Notice of meetings.**

Every person insured by a county mutual insurance company is a member while the policy is in force. The member is entitled to one vote per policy only and must be notified of the time and place of the holding of the meetings of the company by written notice ~~thereof~~ or by an imprint on the face of each policy, receipt, or certificate of renewal, as follows:

The assured is hereby notified that by virtue of this policy the assured is a member of the \_\_\_\_\_ mutual insurance company, and that the annual meetings of the company are held at its home office or designated location on the \_\_\_\_\_ day of \_\_\_\_\_ in each year at \_\_\_\_\_ o'clock.

~~When~~If the blanks in the notice are properly filled, the notice is sufficient.

**SECTION 5. AMENDMENT.** Section 26.1-13-11 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-11. Annual meeting - Quorum.**

The annual meeting of a county mutual insurance company must be held ~~on the second Thursday in March in each year~~following notice of a prescribed date, time, and place unless ~~it~~notice is provided otherwise in the bylaws of the company. Twenty members constitute a quorum for the transaction of business at an annual meeting.

**SECTION 6. AMENDMENT.** Section 26.1-13-12 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-12. General powers, liabilities, and duties of county mutual company - Office - Name - Limitations.**

A county mutual insurance company has the powers and is subject to the liabilities and duties of other insurance companies, except:

1. ~~The principal office of the company must be located within the company's approved territory of operation.~~
2. If the company is organized by the residents of a single county, the name of the county together with the word "county" must be embraced in the corporate name of the company.



- ~~3-2.~~ Notwithstanding contrary territorial limitations in this chapter, a county mutual insurance company may operate and issue the following policies in all the counties of the state:
- a. Protection against loss or damage by any covered hazard to a seasonal dwelling if the primary residence is insured by the company in an authorized county.
  - b. Protection against loss or damage by tornadoes;
  - ~~b-c.~~ Protection against loss or damage by windstorms;
  - ~~c-d.~~ Protection against loss or damage by cyclones;
  - ~~d-e.~~ Protection against loss or damage by hail, except upon growing crops; and
  - ~~e-f.~~ Protection against loss or damage by any hazard upon any risk upon livestock; and
  - f. ~~Protection against loss or damage by any hazard to a seasonal dwelling if the primary residence is insured by the company in an authorized county.~~

**SECTION 7. AMENDMENT.** Section 26.1-13-14 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-14. County mutual company - Insurance authority.**

A county mutual insurance company may insure against loss or damage by fire; lightning; cyclone; windstorm; tornado; hail, except upon growing crops; any insured hazard upon any risk upon livestock; explosion, except the explosion of steam boilers and flywheels; riot; riot attending a strike; civil commotion; aircraft; vehicles; smoke to the property of the insured; theft; vandalism; malicious mischief; water damage and freezing; collision and overturn of farm machinery; collapse of buildings; glass breakage; the additional living expenses incurred over and above normal living costs in cases of damage; the removal of debris; the cost of repairing or replacing homes or living residences; or all such forms of insurance.

**SECTION 8. AMENDMENT.** Section 26.1-13-15 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-15. Territorial limits of county mutual company's operations - Terms of policies - Property insurable.**

1. A county mutual insurance company may not insure any property beyond the company's authorized territory of operation except as provided in subsection 32 of section 26.1-13-12 and except that this territorial limitation does not apply to reinsurance contracts.
2. A policy may not be issued to exceed five years.
3. A policy may not be issued covering property located within the platted limits of an incorporated city in this state, except the policy may provide coverage as specified under sections 26.1-13-14 and 26.1-13-16 within the platted limits of the incorporated city on:
  - a. The place of residence;

- b. A rental property that is no larger than a four residential rental unit;
  - c. A nonresidential property that is not used by the general public; or
  - d. A nonresidential property that is part of an existing policy.
4. The company may insure all property located outside of incorporated cities within the limits of the company's territory, as provided under section 26.1-13-02.
  5. Policies issued under subsection 3 on property located within the platted limits of an incorporated city with a population over ten thousand must conform to rules adopted by the commissioner establishing requirements for underwriting risks and safeguarding financial solvency. A company's net written premiums of the current year in cities with a population over ten thousand may not exceed thirty-five percent of the gross written premiums of the previous year.
  6. A policy issued by the company, if itthe policy so provides, may cover loss or damage to livestock, personal property, vehicles, and farm machinery while temporarily removed from the premises of the insured to other locations.

**SECTION 9. AMENDMENT.** Section 26.1-13-19 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-19. Reinsurance of excessive losses.**

~~Except as otherwise provided in sections 26.1-02-20 and 26.1-02-22, any county mutual insurance company may reinsure in a single contract, with other county mutual insurance companies, against excessive losses on all insurance contracts written. The reinsurance contracts may provide:~~

- ~~1. That whenever the total losses per dollar of insurance in force of any county mutual insurance company joining the contract exceeds the average total losses per dollar of insurance in force of all county mutual insurance companies joining the contract, the excessive loss or a portion thereof must be paid to the county mutual insurance company or companies suffering the excessive loss by the companies having a lower than average loss ratio; and~~
- ~~2. That the payments by individual companies suffering a lower than average loss ratio must be prorated according to a formula based upon the total dollars of insurance in force of any participating company as compared to the total dollars of insurance in force of all participating companies suffering a lower than average loss ratio.~~

~~The payments by any single company may not be greater than that sum which would bring the loss ratio per dollar of insurance in force of the company up to the average loss per dollar of insurance in force of all participating companies. Upon approval by the commissioner, any county mutual insurance company may reinsure in a single contract, with other county mutual insurance companies, against excessive losses on all insurance contracts written.~~

**SECTION 10. AMENDMENT.** Section 26.1-13-21 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-21. Supervision by commissioner.**

The commissioner has full power of supervision over all reinsurance contracts executed under ~~sections~~section 26.1-13-19 and 26.1-13-20.

**SECTION 11. AMENDMENT.** Section 26.1-13-23 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-23. Loss - Notice - Adjustment - Arbitration - Finality of determination of board of adjustment - Powers of board.**

Every member of a county mutual insurance company ~~who~~which sustains loss or damage by fire, lightning, or cyclone shall notify the secretary of the company, or the president in the absence of the secretary, immediately after the loss is sustained. That officer shall ascertain the amount of the loss and shall cause the amount of the loss to be adjusted in the manner provided in the bylaws of the company, or the officer forthwith shall convene the board of directors of the company, and, the board shall appoint a committee of not more than three members of the company to ascertain and adjust the amount of the loss. The company shall assign the loss to be adjusted in the manner provided in the insurance policy of the company. If the parties are unable to agree upon the amount of the damage, the claimant and the company each shall choose a disinterested party to constitute a board of arbitration to settle the loss. If the parties cannot agree, ~~they~~the parties shall choose a third party to act with ~~them~~the parties. The board of arbitration may examine witnesses and shall determine all matters in dispute, and the decision of the arbitration board is final. ~~Any officer or member of the company, while acting as an adjuster, and the members of any board of arbitration appointed pursuant to this section may subpoena and examine witnesses, administer oaths, and take acknowledgments while acting in that capacity.~~

**SECTION 12. AMENDMENT.** Section 26.1-13-28 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-28. Borrowing of money authorized –~~Repayment from assessments.~~**

The board of directors of a county mutual insurance company, in ~~its~~the board's discretion, may borrow money for the payment of unpaid losses. ~~Any money borrowed must be repaid from moneys collected from the next ensuing assessment levied in accordance with this chapter.~~

**SECTION 13. AMENDMENT.** Section 26.1-13-29 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-29. Withdrawal from membership.**

Any member of a county mutual insurance company may withdraw from membership at any time while the company continues to transact the business for which ~~it~~the company was organized if, by withdrawal, the number of members remaining in the company will not be reduced below the original number of incorporators, or the assets of the company will not be reduced below the amount at the time of incorporation. In order to withdraw, a member shall surrender the policy for cancellation; and give written notice of withdrawal to the secretary or designated employee of the company; ~~and pay the member's share of all claims then existing against the company.~~

**SECTION 14. AMENDMENT.** Section 26.1-13-34 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-13-34. Annual statement to be furnished to members of county mutual company ~~or of mutual reinsurance company.~~**

The secretary of each county mutual insurance company and of each mutual reinsurance company formed under this chapter shall prepare and submit to the members of the company, at each annual meeting, a copy of the annual statement required to be filed with the commissioner under section 26.1-03-07.

**SECTION 15. AMENDMENT.** Subsection 7 of section 26.1-42.1-02 of the North Dakota Century Code is amended and reenacted as follows:

7. "Member insurer" means any person, ~~except a county mutual insurance company,~~ that writes any kind of insurance to which this chapter applies under section 26.1-42.1-01, including the exchange of reciprocal or interinsurance contracts and that is licensed to transact insurance in this state. An insurer shall cease to be a member insurer on the day following the termination or expiration of the insurer's license to transact the kinds of insurance to which this chapter applies, however the insurer remains liable as a member insurer for every obligation, including an obligation for assessments levied before the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer that became an insolvent insurer before the termination or expiration of that insurer's license.

**SECTION 16. REPEAL.** Sections 26.1-13-20, 26.1-13-22, 26.1-13-24, 26.1-13-25, 26.1-13-26, 26.1-13-27, 26.1-13-31, 26.1-13-32, and 26.1-13-33 of the North Dakota Century Code are repealed.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 237

### SENATE BILL NO. 2167

(Senators Burckhard, Vedaa)  
(Representatives Kasper, Louser, Schobinger)

AN ACT to create and enact section 26.1-26-31.9 of the North Dakota Century Code, relating to insurance producer and consultant continuing education; and to amend and reenact sections 26.1-26-02 and 26.1-26-35 of the North Dakota Century Code, relating to definitions relating to insurance producers and consultants.

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

**SECTION 1. AMENDMENT.** Section 26.1-26-02 of 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. "Active participation" means:
  - a. Attendance at a formal meeting of a professional insurance association at which a formal business program is presented;
  - b. Service on the board of directors or a formal committee of a professional insurance association and involvement in the activities of the board or committee; or
  - c. Participation in industry, regulatory, or legislative meetings held by or on behalf of a professional insurance association.
2. "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
- 2-3. "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.
- 3-4. "Insurance" means any of the lines of authority in section 26.1-26-11.
- 4-5. "Insurance consultant" means 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.
- 5-6. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 6-7. "Insurer" means all types of insurance companies as well as prepaid legal services organizations and health maintenance organizations.

- 7-8. "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.
- 8-9. "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.
- 9-10. "Person" means an individual or a business entity.
- 40-11. "Professional insurance association" means a state or national membership organization that offers courses, lectures, seminars, or other instructional programs certified by the commissioner as approved continuing education activities pursuant to section 26.1-26-31.3; is organized as an association or corporation for the express purpose of promoting the interests of insurance licensees in this state or nationally; and is based on paid membership renewable annually or biennially for a membership fee.
12. "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.
- 44-13. "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.
- 42-14. "Surplus lines insurance producer" means 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.
- 43-15. "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.
- 44-16. "Uniform application" means the current version of the national association of insurance commissioners uniform application for resident and nonresident insurance producer licensing.
- 45-17. "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 2.** Section 26.1-26-31.9 of the North Dakota Century Code is created and enacted as follows:

**26.1-26-31.9. Credit for active participation.**

1. For each two-year reporting period, the commissioner may approve up to four hours of continuing education credit earned through active participation, with no more than two hours accepted for each calendar year. One hour of active participation equates to one hour of continuing education credit. A licensee may not use continuing education granted for active participation to satisfy

other continuing education requirements or ethics hours required under section 26.1-26-31.1.

2. If an insurance producer or consultant claims continuing education hours through active participation, the professional insurance association shall verify the claimed active participation. The professional insurance association shall inform the commissioner of participation by the insurance producer or consultant. Upon receipt of participation confirmation the commissioner may accept the claimed continuing education hours.

**SECTION 3. AMENDMENT.** Section 26.1-26-35 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26-35. Duties of consultant - Agreements.**

An insurance consultant shall serve with objectivity and complete loyalty the interests of the consultant's client alone and to render the client such information, counsel, and service as within the knowledge, understanding, and opinion, in good faith of the licensee, best serves the client's insurance needs and interests. Before rendering ~~any service set forth in subsection 4 of section 26.1-26-02~~ services as an insurance consultant, an insurance consultant shall prepare a written agreement on a form approved by the commissioner. The agreement must outline the nature of the work to be performed by the consultant and must state the fee for the work. The consultant and the client shall sign the agreement. The consultant shall retain a copy of the agreement for not less than two years after completion of the services. This copy must be available to the commissioner.

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 238

### HOUSE BILL NO. 1144

(Representatives Keiser, Kasper)

AN ACT to create and enact section 26.1-26-04.1 of the North Dakota Century Code, relating to fees for insurance services.

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

**SECTION 1.** Section 26.1-26-04.1 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-26-04.1. Fees for services - Rules.**

1. Notwithstanding any other provision of this title, an insurance producer may charge a fee for any services rendered in connection with the sale, solicitation, negotiation, placement, or servicing of an insurance contract, if the following conditions are met:
  - a. The fees may not be charged on a personal lines account, such as personal homeowners and automobile, personal life, and health insurance.
  - b. Before rendering the services and accepting any payment, a written disclosure must be provided to the party to be charged on a form approved by the commissioner disclosing:
    - (1) The nature of the services for which the fees will be charged along with a separate itemization of the amount of the fees;
    - (2) That the fees are charged in addition to any premiums paid;
    - (3) That if the insurance producer is also an appointed agent of an insurer with which coverage is being considered for placement, a statement that the insurance producer also represents the insurer in the transaction and owes a duty of loyalty to the insurer; and
    - (4) That if the insurance producer is to receive a commission from the sale of an insurance policy related to the services rendered, a statement clearly and completely disclosing that the:
      - (a) Insurance producer will receive a commission from the insurer which is paid from the premiums owed for the insurance; and
      - (b) Amount of commission received by the insurance producer may differ depending on the product sold and the insurer.
  - c. The disclosure required by this section must be signed and dated by both the producer and the party to be charged.
  - d. The producer shall retain the signed disclosure required by this section for not less than five years following the completion of the service. A copy of



- the signed disclosure must be available to the commissioner for inspection upon request.
- e. The insurance producer may not pay or return, or offer to pay or return, all or part of a fee charged as an inducement to purchase a specific policy, or coverage within a policy, or coverage from a particular insurer.
  - f. Any fee charged under this section must bear a reasonable relationship to the services provided and may not be discriminatory.
2. An insurance producer charging a fee for services rendered for risk management services under this section owes the person to be charged a higher standard of care than the ordinary standard of care otherwise owed by an insurance producer to fully advise the party to be charged as to the party's insurance needs, including the duty to inform the person to be charged as to a potential source of risk and to recommend, if available, insurance coverage for that risk.
  3. An insurance producer may charge an individual, for personal or commercial lines, a fee for paying agency-billed premiums and fees by credit card or other electronic means, if the fee is disclosed to the client in writing and agreed to by the client in writing.
  4. The commissioner may adopt rules determined necessary by the commissioner for the administration of this section.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 239

### HOUSE BILL NO. 1219

(Representative Keiser)

AN ACT to create and enact chapter 26.1-26.8 and chapter 26.1-39.2 of the North Dakota Century Code, relating to public adjuster licensing and to contracts between insured homeowners and residential contractors; to amend and reenact subdivision mm of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; and to provide a penalty.

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

<sup>103</sup> **SECTION 1. AMENDMENT.** Subdivision mm of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

mm. The insurance department for criminal history record checks authorized under ~~chapter~~chapters 26.1-26 and 26.1-26.8.

**SECTION 2.** Chapter 26.1-26.8 of the North Dakota Century Code is created and enacted as follows:

#### **26.1-26.8-01. Scope.**

This chapter governs the qualifications and procedures for licensing public adjusters in this state and specifies the duties of and restrictions on public adjusters, including limitation of licensure to assisting only insureds with first-party claims.

#### **26.1-26.8-02. Definitions.**

As used in this chapter:

1. "Business entity" has the same meaning as provided in section 26.1-26-02.
2. "Department" means the insurance department.
3. "Home state" means the state in which the principal place of residence or principal place of business of the public adjuster is located.
4. "Insured" means a person insured under the insurance policy against which the claim is made.
5. "Public adjuster" means a person that, for compensation, does the following:
  - a. Acts for or aids an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured;

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<sup>103</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1074, chapter 102, section 1 of House Bill No. 1084, chapter 100, section 1 of House Bill No. 1102, chapter 404, section 2 of House Bill No. 1349, chapter 61, and section 1 of House Bill No. 1376, chapter 101.

- b. Advertises for employment as a public adjuster of first-party claims or otherwise solicits business or represents to the public the person is a public adjuster of first-party claims for loss or damage to real or personal property of an insured; or
  - c. Solicits the business of investigating or adjusting losses or of advising an insured about first-party claims for loss or damage to real or personal property of the insured.
6. "Uniform business entity application" means the uniform business entity application prescribed by the commissioner which conforms substantially to the uniform business entity application for resident and nonresident business entities adopted by the national association of insurance commissioners.
7. "Uniform individual application" means the uniform individual application prescribed by the commissioner which conforms substantially to the uniform application for individual adjuster licensing adopted by the national association of insurance commissioners.

### **26.1-26.8-03. License required - Penalty.**

1. A person may not operate as or represent that the person is a public adjuster in this state unless the person is licensed as a public adjuster in accordance with this chapter.
2. A public adjuster may not misrepresent to an insured the public adjuster is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster.
3. A public adjuster may not solicit or enter an agreement for the repair or replacement of damaged property on which the public adjuster has engaged to adjust or settle claims for losses or damages of the insured.
4. Except as provided in subsection 1, licensure as a public adjuster is not required for:
  - a. An attorney admitted to practice in this state, in the course of acting in the attorney's professional capacity as an attorney;
  - b. A person that negotiates or settles claims arising under a life or health insurance policy or an annuity contract;
  - c. An individual employed for the limited purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including a photographer, estimator, private investigator, engineer, or handwriting expert;
  - d. A licensed health care provider, or an employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or
  - e. A person that settles subrogation claims between insurers.
5. A person willfully violating subsection 1 or 2 is guilty of a class C felony.

### **26.1-26.8-04. Application for resident license.**

An individual applying for a resident public adjuster license shall submit to the commissioner a completed uniform individual application and declare under penalty of denial, 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. The commissioner shall approve the application if the commissioner determines the individual:

1. Is at least eighteen years of age;
2. Has a principal place of residence or principal place of business in this state;
3. Has not committed an act that is a ground for denial, suspension, or revocation set forth in section 26.1-26.8-10;
4. Has paid the resident licensing fee, not to exceed one hundred dollars, prescribed by the commissioner;
5. Except as otherwise provided in this chapter, has passed the examinations required by section 26.1-26.8-07;
6. Is trustworthy, reliable, and of good reputation;
7. Is financially responsible to exercise the license and has provided proof of financial responsibility, as required in section 26.1-26.8-11;
8. Maintains an office in this state, with public access to the office by reasonable appointment or regular business hours; and
9. Has completed a criminal history record check as provided in section 12-60-24.
  - a. All costs associated with the criminal history record check under this section are the responsibility of the applicant.
  - b. This subsection does not apply to license continuation under section 26.1-26.8-09 or to an individual who applies for a public adjuster license within twelve months following the cancellation or expiration of a valid resident public adjuster license issued by the department, unless the license was suspended or revoked.
  - c. The commissioner may make arrangements, including contracting with an outside service, for the collection and transmission of fingerprints for conducting criminal history record checks.

#### **26.1-26.8-05. Nonresident license reciprocity.**

1. An individual applying for a nonresident public adjuster license shall apply to the commissioner in the manner prescribed by the commissioner and declare under penalty of denial, 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. The commissioner shall approve the application if the commissioner determines the applicant:
  - a. Is licensed as a resident public adjuster and in good standing in the individual's home state and the home state awards nonresident public

- adjuster licenses to residents of this state on the same basis as provided for in this chapter; and
- b. Has paid the nonresident licensing fee, not to exceed one hundred dollars, prescribed by the commissioner.
  2. The commissioner may verify the licensing status of a nonresident public adjuster through the producer database maintained by the national association of insurance commissioners, or the association's affiliates or subsidiaries.
  3. As a condition to continuation of a nonresident public adjuster license, a nonresident public adjuster shall maintain a resident public adjuster license in good standing in the individual's home state.
  4. A licensed nonresident public adjuster shall surrender immediately to the commissioner the individual's nonresident public adjuster license and the commissioner shall terminate the individual's nonresident public adjuster license if the home state public adjuster license terminates for any reason, unless the individual has been issued a license as a resident public adjuster in a new home state and the new home state has reciprocity with this state. A licensed nonresident public adjuster shall notify the commissioner of a change to a new home state as soon as possible, but no later than thirty days after receiving a license as a resident public adjuster from the new home state. The licensed nonresident public adjuster shall include both the new and the old addresses in the notice to the commissioner.

#### **26.1-26.8-06. License required for business entity.**

1. A business entity acting as a public adjuster in this state must be licensed as a public adjuster. A business entity applying for a public adjuster license shall submit to the commissioner a completed uniform business entity application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the knowledge and belief of the entity. The commissioner shall approve the application if the commissioner determines the applicant:
  - a. Has paid the business entity licensing fee, not to exceed one hundred fifty dollars, prescribed by the commissioner; and
  - b. Has designated a resident public adjuster or a nonresident public adjuster licensed pursuant to this chapter to be responsible for compliance with the insurance laws, rules, and regulations of this state for the business entity.
2. The commissioner may require additional documents be submitted that are reasonably necessary to verify the information contained in an application pursuant to this section.

#### **26.1-26.8-07. Examination.**

1. An individual applying for a resident public adjuster license shall pass a written examination, unless exempt pursuant to section 26.1-26.8-08. The examination must test the individual's knowledge concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state and be conducted as prescribed by the commissioner.

2. The commissioner may make arrangements, including contracting with an outside testing service, for administering the written examination required pursuant to subsection 1 and collecting the nonrefundable fee as prescribed by the commissioner as set forth in section 26.1-01-07.
3. An individual applying for examination shall 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 if the individual remits all required fees and forms before being rescheduled for another examination.

#### **26.1-26.8-08. Exemptions from examination.**

1. An individual who applies for a resident public adjuster license in this state who was previously licensed as a public adjuster in another state is not required to complete an examination. This exemption is available only if:
  - a. The applicant is currently licensed in another state; or
  - b. The commissioner receives the application within ninety days of the cancellation of the applicant's previous license and the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in the state or the state's public adjuster database records, maintained by the national association of insurance commissioners or the association's affiliates or subsidiaries, indicate the applicant is or was licensed in good standing.
2. To become a resident licensee pursuant to section 26.1-26.8-04, an individual licensed as a public adjuster in another state who moves to this state shall apply within ninety days of establishing legal residence in this state. An examination may not be required of that individual to obtain a resident public adjuster license unless the commissioner determines otherwise by rule.
3. If an individual who applies for a resident public adjuster license previously was licensed as either a resident public adjuster or a nonresident public adjuster in this state, the commissioner may not require the individual to complete an examination if:
  - a. The application is received within twelve months of the termination of the previous license in this state; and
  - b. At the time of the termination, the applicant was in good standing in this state.

#### **26.1-26.8-09. License - Renewal - Reinstatement.**

1. The commissioner shall issue a resident public adjuster license or nonresident public adjuster license to an individual who meets the necessary requirements of this chapter.
  - a. A resident public adjuster license and a nonresident public adjuster license expire on the last day of the month of the licensed public adjuster's birthday following the two-year anniversary of issuance of a license by the commissioner.

- b. To renew a license, a licensed resident public adjuster and a licensed nonresident public adjuster shall file a biennial license continuation in the form and manner prescribed by the commissioner and pay a fee of twenty-five dollars. The commissioner shall give a licensee at least sixty days' notice of the biennial license continuation filing deadline. A resident public adjuster or a nonresident public adjuster who allows the license to lapse may, within the twelve-month period immediately following the expiration date, reinstate the same license without the necessity of passing a written examination, upon payment of a reinstatement fee, not to exceed one hundred twenty-five dollars, prescribed by the commissioner in addition to the renewal fee.
      - c. The commissioner may grant an individual licensee who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, including a long-term medical disability, a waiver of an examination requirement or a fine, fee, or sanction imposed for failure to comply with renewal procedures.
  - 2. The commissioner shall issue a business entity public adjuster license to a business entity that meets the necessary requirements of this chapter.
    - a. A business entity public adjuster license expires on the two-year anniversary of issuance of a license by the commissioner.
    - b. To renew a license, a licensed business entity public adjuster shall file a biennial license continuation in the form and manner prescribed by the commissioner.
    - c. A business entity public adjuster license may be renewed within the ninety-day period immediately preceding the expiration date upon payment of the renewal fee, not to exceed one hundred fifty dollars, prescribed by the commissioner. A business entity public adjuster that allows the license to lapse may, within the thirty-day period immediately following the expiration date, renew the same license upon payment of a late renewal fee, not to exceed one hundred twenty-five dollars, prescribed by the commissioner in addition to the renewal fee.
    - d. A business entity public adjuster license renewed within the thirty-day period immediately following the expiration date pursuant to this section is deemed to have been renewed before the expiration date.
  - 3. A license issued pursuant to this chapter must contain the licensee's name, address, and license number; the date of issuance; the lines of authority; the expiration date; and any information the commissioner deems necessary.
  - 4. Within thirty days after the change, a licensee shall inform the commissioner, by any means acceptable to the commissioner, of a change of legal name, address, or other information submitted on the application.
    - a. A licensee who fails to provide this notification of change is subject to a fine by the commissioner of not more than five hundred dollars per violation, suspension of the license until the change is reported to the commissioner, or both.

- b. A licensee doing business under a name other than the licensee's legal name shall notify the commissioner before using the assumed name.
- 5. A licensee is subject to the provisions of chapter 26.1-04.
- 6. A licensee shall report to the commissioner any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. The report must include a copy of the order, consent to order, or other relevant legal documents.
- 7. Within thirty days after a criminal conviction, a licensee shall report to the commissioner any criminal conviction of the licensee 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.
- 8. The commissioner may contract with nongovernmental entities, including the national association of insurance commissioners, or affiliates or subsidiaries the national association oversees, to perform ministerial functions, including the collection of fees, related to the administration of this chapter.
- 9. The commissioner may adopt rules establishing license renewal procedures.

#### **26.1-26.8-10. License denial, nonrenewal, or revocation - Penalty.**

- 1. The commissioner may suspend, revoke, or refuse to issue or renew a resident public adjuster license, nonresident public adjuster license, or business entity public adjuster license or may levy an administrative fine in accordance with subsection 4, or a combination of those actions, for the following causes:
  - a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
  - b. Violating any provision of this title or violating a rule, regulation, subpoena, or order of the commissioner or another state's insurance commissioner;
  - c. Obtaining or attempting to obtain a license through misrepresentation or fraud;
  - d. Improperly withholding, misappropriating, or converting money or property received in the course of doing business;
  - e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
  - f. Having been convicted of a felony or a class A or B misdemeanor;
  - g. Having admitted or been found to have committed an insurance unfair trade practice, an unfair claims settlement practice, or fraud;
  - h. Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere or failing to comply with section 26.1-26.8-15;



- i. Having an insurance or public adjuster license, or its equivalent, denied, suspended, placed on probation, or revoked in this state or in another state, province, district, or territory;
  - j. Forging another person's name to an application for insurance or to a document related to an insurance transaction;
  - k. Improperly using notes or other reference materials to complete an examination for an insurance license;
  - l. Knowingly accepting insurance business from a person that is not licensed;
  - m. Failing to comply with an administrative or court order imposing a child support obligation;
  - n. Failing to pay state income tax or comply with an administrative or court order directing payment of state income tax; or
  - o. Failing to maintain in good standing a resident license in the public adjuster's home state.
2. If the commissioner does not renew or denies an application for a public adjuster license, the commissioner shall notify the applicant or licensee and advise, in writing, the reason for the denial or nonrenewal of the license. Within thirty days of nonrenewal or denial, the applicant or licensee may make written demand upon the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing must be held pursuant to chapter 28-32.
  3. A business entity public adjuster license may be suspended, revoked, or denied if the commissioner finds, after notice and hearing, that a violation committed by an individual licensee providing services through the business entity was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation neither was reported to the commissioner nor was corrective action taken in relation to the violation.
  4. In addition to or in lieu of an applicable denial, suspension, or revocation of a license, a person violating this chapter may, after notice and hearing, be subject to an administrative fine of not more than ten thousand dollars per violation. A fine may be enforced in the same manner as civil judgments. A person charged with a violation of this chapter may waive the right to a hearing and consent to the discipline the commissioner determines is appropriate. Chapter 28-32 governs all hearings held pursuant to this subsection.
  5. The commissioner may enforce this chapter and impose a penalty or remedy authorized by this chapter against a person under investigation for or charged with a violation of this chapter even if the person's license has been surrendered or lapsed by operation of law. A disciplinary proceeding may not be instituted against a person after three years from the termination of the person's license.

#### **26.1-26.8-11. Proof of bond or insurance.**

1. At the time of issuance of a resident public adjuster license or a nonresident public adjuster license and for the duration of the license, an applicant shall maintain a surety bond or proof of insurance satisfactory to the commissioner for the use and benefit of the commissioner for insureds that have remitted fees, retainers, compensation, deposits, or other things of value to the public adjuster in the course of the public adjuster's business. The bond:
  - a. Must be a minimum of twenty thousand dollars; and
  - b. May not be terminated by the surety company or public adjuster unless written notice has been filed with the commissioner and submitted to the public adjuster at least sixty days before the termination.
2. The commissioner may request the evidence of financial responsibility at any time the commissioner deems relevant.
3. A public adjuster immediately shall notify the commissioner if evidence of financial responsibility terminates or becomes impaired. The authority to act as a public adjuster automatically terminates if the evidence of financial responsibility terminates or becomes impaired.

#### **26.1-26.8-12. Continuing education.**

1. Except as otherwise provided in this section, an individual who holds a resident public adjuster license or a nonresident public adjuster license shall satisfactorily complete a minimum of twenty-four credits of continuing education, including three credits of ethics, reported on a biennial basis in conjunction with the license renewal cycle. Credits for continuing education courses attended in any one year over the minimum number of hours of education required, not to exceed twelve hours, may be credited to the year next preceding the year in which the credits were earned or to the year next following the year in which the credits were earned. Report of continuing education must be made at the end of a two-year period. The commissioner may provide a one-time extension of the two-year reporting requirement, not to exceed thirty-six months, if additional time is necessary to implement the transition to reporting continuing education by birth month.
2. The requirements of subsection 1 do not apply to a nonresident public adjuster who has met the continuing education requirements of the adjuster's home state and whose home state gives credit to residents of this state on the same basis.
3. The commissioner shall provide by rule for reporting by birth month of compliance with the continuing education requirements of this section.
4. The commissioner shall adopt by rule criteria for the accreditation of courses for continuing education. Applications for accreditation of a continuing education course offered in this state must be submitted to the commissioner within the time provided by rule and on forms established by rule and with a fee of fifty dollars. The commissioner shall make a final determination as to accreditation and assignment of credit-hours for continuing education courses.

#### **26.1-26.8-13. Contract between public adjuster and insured.**

1. A contract for a public adjuster's services must be in writing and contain the following terms:

- a. Legible full name of the public adjuster signing the contract, as specified in commissioner records;
  - b. Home state, business address, and telephone number;
  - c. Public adjuster license number;
  - d. Title of "Public Adjuster Contract";
  - e. Insured's full name and street address, insurer name, and insurance policy number, if known or upon notification;
  - f. Description of the loss and the location of the loss, if applicable;
  - g. Description of services to be provided to the insured;
  - h. Signatures of the public adjuster and the insured;
  - i. The date the contract was signed by the public adjuster and the date the contract was signed by the insured;
  - j. Attestation language stating the public adjuster is fully bonded pursuant to state law; and
  - k. The specific amount of compensation, including the full salary, fee, commission, or other consideration the public adjuster is to receive for services.
2. The contract may specify the public adjuster must be named as a copayee on an insurer's payment of a claim.
  3. If the compensation is based on a share of the insurance settlement, the exact percentage must be specified in the contract.
  4. Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment must be specified by type and the dollar estimates must be set forth in the contract. Additional expenses must be approved in writing by the insured.
  5. Compensation provisions in a public adjuster contract may not be redacted in a copy of the contract provided to the commissioner.
  6. If the insurer, not later than three days after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster:
    - a. May not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;
    - b. Shall inform the insured the loss recovery amount might not be increased by the insurer; and
    - c. Is entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the

claim is paid or the insured receives a written commitment to pay from the insurer.

7. A public adjuster contract may not contain a contract term that:
  - a. Allows for balance billing of the insured;
  - b. Allows a percentage fee to be collected by the public adjuster if money is due from an insurer, but not paid, or allows a public adjuster to collect the entire fee from the first check issued by an insurer, rather than a percentage of each check issued by an insurer;
  - c. Requires the insured to authorize an insurer to issue a check only in the name of the public adjuster;
  - d. Imposes collection costs or late fees; or
  - e. Precludes a public adjuster from pursuing civil remedies.
  
8. Before the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process which states:
  - a. Property insurance policies obligate the insured to present a claim to the insurer for consideration.
  - b. The following three types of adjusters could be involved in the claim process:
    - (1) "Company adjuster" means an insurance adjuster who is an employee of an insurer. A company adjuster represents the interest of the insurer, is paid by the insurer, and will not charge the insured a fee.
    - (2) "Independent adjuster" means an insurance adjuster who is hired on a contract basis by an insurer to represent the interest of the insurer in the settlement of the claim. An independent adjuster is paid by the insurer and will not charge the insured a fee.
    - (3) "Public adjuster" means an insurance adjuster who does not work for an insurer. A public adjuster works for the insured to assist in the preparation, presentation, and settlement of the claim. The insured hires a public adjuster by signing a contract agreeing to pay a fee or commission based on a percentage of the settlement or other method of compensation.
  - c. The insured is not required to hire a public adjuster to help the insured meet the insured's obligations under the policy, but has the right to do so.
  - d. The insured has the right to initiate direct communications with the insured's attorney, the insurer, the company adjuster, and the insurer's attorney, or any person regarding the settlement of the insured's claim.
  - e. The public adjuster is not a representative or employee of the insurer.

- f. The salary, fee, commission, or other consideration to be paid to a public adjuster is the obligation of the insured, not the insurer.
9. The contract must be executed in duplicate to provide an original contract to the public adjuster and to the insured. The original contract retained by the public adjuster must be available at all times for inspection without notice by the department.
10. The public adjuster shall provide the insurer a notification letter signed by the insured, authorizing the public adjuster to represent the insured's interest. The notification letter must include a copy of the signed contract.
11. The public adjuster shall give the insured written notice of the insured's rights as provided in this section.
12. Within three days after the claim is submitted to the insurer, the insured has the right to rescind the contract. The rescission must be in writing and mailed or delivered to the public adjuster at the address in the contract within the three business-day period.
13. If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract must be returned to the insured within fifteen days following the receipt by the public adjuster of the rescission notice.
14. The commissioner may require a public adjuster to file a contract with the department in a manner prescribed by the commissioner.

**26.1-26.8-14. Record retention.**

1. A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section include:
  - a. The name of the insured;
  - b. The date, location, and amount of the loss;
  - c. A copy of the contract between the public adjuster and the insured;
  - d. The name of the insurer, amount, expiration date, and policy number for each policy carried with respect to the loss;
  - e. An itemized statement of the amount recovered for the insured;
  - f. An itemized statement of all compensation received by the public adjuster, from any source, in connection with the loss;
  - g. A register of all money received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees, transfers, and disbursements from a trust account and all transactions concerning all interest-bearing accounts;
  - h. The name of the public adjuster who executed the contract;
  - i. The name of the attorney representing the insured, if applicable, and the name of the claims representative of the insurer; and

- j. Evidence of financial responsibility in a format prescribed by the commissioner.
2. A public adjuster shall maintain the records for at least six years after the termination of the transaction with an insured and shall open the records to examination by the department at all times.

### **26.1-26.8-15. Standards of conduct of public adjuster.**

1. A public adjuster shall serve with objectivity and complete loyalty to the interest of the insured and in good faith shall render to the insured such information, counsel, and service, as within the knowledge, understanding, and opinion of the public adjuster will best serve the insurance claim needs and interest of the insured.
2. A public adjuster may not solicit or attempt to solicit an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.
3. A public adjuster may not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this chapter.
4. A public adjuster may not have a financial interest in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured. A financial interest includes ownership of, employment by, or other consideration received from an individual or business entity that performs work pertaining to damage related to the insured loss.
5. A public adjuster may not acquire an interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer.
6. A public adjuster may not refer or direct the insured to obtain needed repairs or services in connection with a loss from a person:
  - a. With which the public adjuster has a financial interest; or
  - b. From which the public adjuster may receive compensation or other consideration for the referral.
7. A public adjuster may not undertake the adjustment of a claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage or if the loss or coverage otherwise exceeds the current expertise of the public adjuster.
8. A public adjuster may not knowingly make a false oral or written material statement regarding a person engaged in the business of insurance to an insured client or potential insured client.
9. A public adjuster, while licensed pursuant to this chapter, may not represent or act as a company adjuster or independent adjuster in any circumstance.
10. A public adjuster may not enter a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the person that will perform repair work.

11. A public adjuster may not agree to a loss settlement without the insured's knowledge and consent.

#### **26.1-26.8-16. Public adjuster fees.**

1. A public adjuster may charge the insured a reasonable fee for public adjuster services.
2. A person may not accept a commission, service fee, or other valuable consideration for investigating or settling claims in this state if the person is required to be licensed under this chapter and is not licensed.
3. A public adjuster may not charge, agree to, or accept as compensation or reimbursement a payment, commission, fee, or other thing of value equal to or more than ten percent of an insurance settlement or proceeds resulting from a catastrophic disaster.
4. A public adjuster may not require, demand, or accept a fee, retainer, compensation, deposit, or other thing of value before settlement of a claim, unless the loss is being handled by the public adjuster on a time-plus-expense basis.

#### **26.1-26.8-17. Rulemaking authority.**

The commissioner may adopt rules to carry out this chapter.

#### **26.1-26.8-18. Investigation by commissioner.**

Within a reasonable time after receipt of a properly completed application for a license under this chapter, the commissioner may conduct an investigation and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter the commissioner believes necessary or advisable to determine compliance with this chapter or for the protection of the public.

#### **26.1-26.8-19. Approval of examination by commissioner - Contents.**

Each examination must be approved for use by the commissioner and must reasonably test the applicant's knowledge as to the policies and transactions to be handled under the license applied for, the duties and responsibilities of the licensee, and the pertinent insurance laws of this state.

#### **26.1-26.8-20. Vendor authority.**

The commissioner may contract with nongovernmental entities, including the national association of insurance commissioners or any affiliate or subsidiary the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees, related to public adjuster licensing.

#### **26.1-26.8-21. Commissioner may make examinations and investigations.**

Whenever the commissioner believes this chapter has been violated, the commissioner, at the expense of the public adjuster involved, may examine, at the offices of the public adjuster, whether located within or outside this state, all books, records, and papers of the public adjuster or the company with which the public adjuster is affiliated and any books, records, and papers of any insured within this state, and may examine under oath, the officers, managers, and public adjusters or the insured as to the violation.

**26.1-26.8-22. Statute of limitations.**

After the effective date of this Act, a civil action for the recovery of damages resulting from negligence or breach of contract brought against any person licensed under this chapter by any person claiming to have been injured as a result of the providing of public adjusting services or the failure to provide public adjusting services of a licensee may not be commenced in this state unless the action is commenced on or before the earlier of:

1. Two years from the date the alleged act, omission, or neglect is discovered or should have been discovered by exercise of reasonable diligence; or
2. Six years after performance of the service for which the claim for relief arises, unless discovery was prevented by the fraudulent conduct of the licensee.

**SECTION 3.** Chapter 26.1-39.2 of the North Dakota Century Code is created and enacted as follows:

**26.1-39.2-01. Definitions.**

As used in this chapter:

1. "Residential contractor" means a person in the business of contracting or offering to contract with an owner or possessor of residential real estate to:
  - a. Repair or replace a roof system or perform other exterior repair, replacement, construction, or reconstruction work on residential real estate;
  - b. Perform interior or exterior cleanup services on residential real estate; or
  - c. Arrange for, manage, or process the work referred to in subdivision a or b.
2. "Residential real estate" means a new or existing building, including a detached garage, constructed for habitation by at least one but no more than four families.
3. "Roof system" includes roof coverings, roof sheathing, roof weatherproofing, and insulation.

**26.1-39.2-02. Contract to be paid from proceeds of property and casualty insurance policy - Right to cancel - Duties.**

1. A person that enters a written contract with a residential contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy may cancel the contract before midnight on the later of the fifth business day after the person has:
  - a. Entered the written contract; or
  - b. Received written notice from the person's insurer that all or part of the claim or contract is not a covered loss under the insurance policy.
2. The written contract must include a statement that the insured homeowner has the right to cancel the contract in accordance with subsection 1.



3. The person seeking to cancel the contract shall evidence the cancellation by giving the residential contractor a signed and dated copy of written notice of the cancellation.
  - a. The notice of cancellation may be delivered or mailed to the address of the residential contractor's place of business as stated in the contract.
  - b. The notice of cancellation must include a copy of the written notice from the person's insurer, if applicable, to the effect that all or part of the claim or contract is not a covered loss under the insurance policy.
  - c. Notice of cancellation given by mail is effective upon deposit in the United States mail, postage prepaid, if properly addressed to the residential contractor.
  - d. Notice of cancellation is not required to be in a particular form and is sufficient if the notice indicates the intent of the insured not to be bound by the contract.
4. Within ten days after a contract to provide goods or services to be paid from the proceeds of a property and casualty insurance policy has been canceled by notification pursuant to this section, the residential contractor shall tender to the person canceling the contract any payments, partial payments, or deposits made by the person and any note or other evidence of indebtedness, except if the residential contractor has provided goods or services agreed to by the person in writing to be necessary to prevent damage to the premises, the residential contractor is entitled to be paid the reasonable value of those goods or services. A contract provision to provide goods or services to be paid from the proceeds of a property and casualty insurance policy requiring the payment of a fee that is not for those goods or services is not enforceable against a person that has canceled a contract pursuant to this section.

#### **26.1-39.2-03. Prohibited acts.**

A residential contractor may not promise to rebate a portion of an insurance deductible as an inducement to the sale of goods or services. A promise to rebate a portion of an insurance deductible includes granting an allowance or offering a discount against the fees to be charged or paying an insured or a person associated with the residential real estate a form of compensation, except for an item of nominal value.

#### **26.1-39.2-04. Post-loss assignment of rights or benefits.**

A post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy insuring residential real estate is subject to each of the following:

1. The assignment may authorize a residential contractor to be named as a copayee for the payment of benefits under a property and casualty insurance policy covering residential real estate.
2. The assignment must be provided to the insurer of the residential real estate within five business days after execution.

3. The assignment must include a statement that the residential contractor made no assurances the claimed loss will be fully covered by an insurance contract and must include the following notice in capitalized fourteen-point type:

"YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. THE ITEMIZED DESCRIPTION OF THE WORK TO BE DONE SHOWN IN THIS ASSIGNMENT FORM HAS NOT BEEN AGREED TO BY THE INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING.

THE INSURER MAY ONLY PAY FOR THE COST TO REPAIR OR REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL, SUBJECT TO THE TERMS OF THE POLICY."

4. The assignment may not impair the interest of a mortgagee listed on the declarations page of the property and casualty insurance policy that is the subject of the assignment.
5. The assignment may not prevent or inhibit an insurer from communicating with the named insured or mortgagee listed on the declarations page of the property and casualty insurance policy that is the subject of the assignment.
6. The assignment must include a statement that the insured homeowner has the right to cancel the assignment in accordance with subsection 1 of section 26.1-39.2-02.

#### **26.1-39.2-05. Itemized description of work.**

Before commencement of repair or replacement work, a residential contractor shall furnish the insured and insurer with an itemized description of the work to be done and the materials, labor, and fees for repair or replacement of the damaged residential real estate and the total itemized amount agreed to be paid for the work to be performed, except the description may not limit the insured or residential contractor from identifying other goods and services necessary to complete repairs or replacement associated with a covered loss.

#### **26.1-39.2-06. Notice required.**

A written contract, repair estimate, or work order prepared by a residential contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy must include the following notice of the prohibition contained in section 26.1-39.2-03 in capitalized fourteen-point type which must be signed by the named insured and sent to the named insured's insurer before payment of proceeds under the applicable insurance policy:

"IT IS A VIOLATION OF THE INSURANCE LAWS OF NORTH DAKOTA TO REBATE ANY PORTION OF AN INSURANCE DEDUCTIBLE AS AN INDUCEMENT TO THE INSURED TO ACCEPT A RESIDENTIAL CONTRACTOR'S PROPOSAL TO REPAIR DAMAGED PROPERTY. REBATE OF A DEDUCTIBLE INCLUDES GRANTING AN ALLOWANCE OR OFFERING A DISCOUNT AGAINST THE FEES TO BE CHARGED FOR WORK TO BE PERFORMED OR PAYING THE INSURED HOMEOWNER THE DEDUCTIBLE AMOUNT SET FORTH IN THE INSURANCE POLICY.

THE INSURED HOMEOWNER IS PERSONALLY RESPONSIBLE FOR PAYMENT OF THE DEDUCTIBLE. THE INSURANCE FRAUD STATUTES AND

NORTH DAKOTA CRIMINAL STATUTES PROHIBIT THE INSURED HOMEOWNER FROM ACCEPTING FROM A RESIDENTIAL CONTRACTOR A REBATE OF THE DEDUCTIBLE OR OTHERWISE ACCEPTING AN ALLOWANCE OR DISCOUNT FROM THE RESIDENTIAL CONTRACTOR TO COVER THE COST OF THE DEDUCTIBLE. VIOLATIONS MAY BE PUNISHABLE BY CIVIL OR CRIMINAL PENALTIES."

**26.1-39.2-07. Violation of the chapter.**

A contract entered with a residential contractor is void if the residential contractor violates this chapter.

**26.1-39.2-08. Rulemaking authority.**

The commissioner may adopt rules to carry out this chapter.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 240

### HOUSE BILL NO. 1391

(Representatives Keiser, Bosch, Dockter, Lefor, Louser, Nathe)  
(Senators Burckhard, Klein, Meyer)

AN ACT to create and enact chapter 26.1-26.9 of the North Dakota Century Code, relating to regulation of self-service storage insurance.

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

**SECTION 1.** Chapter 26.1-26.9 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-26.9-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Location" means any physical location in this state or any website, call center site, or similar location directed to residents of this state.
2. "Occupant" means the person who rents a space at a self-service storage facility under a rental agreement, or a sublessee, successor, or assignee of the renter.
3. "Owner" means any person who owns, leases, subleases, manages, or operates a self-service storage facility and receives rent from an occupant under a rental agreement.
4. "Personal property" means movable property not affixed to land, including merchandise and household goods.
5. "Rental agreement" means a written agreement between the owner and the occupant which establishes or modifies the terms and conditions of the occupant's use of a space at a self-service storage facility.
6. "Self-service storage facility" means any real property used for renting or leasing individual spaces in which occupants customarily store and remove their personal property. The term does not include a garage used principally for parking motor vehicles; any property of a financial institution which contains vaults, safe deposit boxes, or other receptacles for the purpose and benefit of the financial institution's customers; or a warehouse where warehouse receipts, bills of lading, or other documents of title are issued for the personal property stored.
7. "Self-service storage insurance" means personal property insurance offered in connection with and incidental to the rental of a space at a self-service storage facility and which provides coverage to occupants at the self-service storage facility where the insurance is transacted for the loss of or damage to personal property occurring at the facility or when the property is in transit to or from the facility during the period of the rental agreement.

8. "Supervising entity" means a person that is a licensed insurer or insurance producer appointed by an insurer to supervise the administration of a self-service storage insurance program.

#### **26.1-26.9-02. Licensure of owners.**

1. An owner shall obtain from the insurance commissioner and hold a limited lines license under this section if the owner sells, solicits, or offers coverage for self-service storage insurance. This section does not require an owner to be licensed solely to display and make available to occupants and prospective occupants brochures and other promotional materials created by or on behalf of an authorized insurer or surplus lines insurer.
2. A limited lines license issued under this section is limited to authorizing an owner and the owner's employees and authorized representatives to sell, solicit, and offer coverage for self-service storage insurance to occupants.
3. A limited lines license issued under this section authorizes an owner and the owner's employees and authorized representatives to sell, solicit, and offer self-service storage insurance coverage at each location at which the owner conducts business.
4. The owner or supervising entity shall maintain a registry of owner locations authorized to sell, solicit, or offer self-service storage insurance coverage in this state. Upon request by the commissioner, and with five days' notice, the owner or supervising entity shall provide the registry to the commissioner for inspection and examination.
5. Notwithstanding any other provision of law, a license issued under this section authorizes the licensee and the licensee's employees and authorized representatives to engage only in activities permitted by this chapter in connection with the business of insurance unless authorized to do so under another license issued by the commissioner.

#### **26.1-26.9-03. Sale of self-service storage insurance - Requirements.**

1. At every location where self-service storage insurance is offered to occupants, the owner shall make available to occupants brochures or other written or electronic materials that:
  - a. Disclose that self-service storage insurance may provide a duplication of coverage already provided by an occupant's homeowner's insurance policy, renter's insurance policy, or other source of coverage.
  - b. State the purchase by the occupant of the self-service storage insurance offered by the owner is not required to lease a space at the self-service storage facility.
  - c. Provide the actual terms of the self-service storage insurance coverage, or summarize the material terms of the insurance coverage, including:
    - (1) The identity of the insurer;
    - (2) The identity of the supervising entity, if any;

- (3) The amount of any applicable deductible and how the deductible is to be paid;
  - (4) Benefits of the coverage; and
  - (5) Key terms and conditions of the coverage.
- d. Summarize the process for filing a claim.
  - e. State an occupant that purchases self-service storage insurance may cancel enrollment for the occupant's coverage at any time, and the person paying the premium shall receive a refund of any applicable unearned premium.
2. The written materials required by this section are not subject to filing or approval requirements with the commissioner.
  3. Self-service storage insurance may be provided under an individual policy or a commercial, corporate, group, or master policy. Form, policy, and rate filings for self-service storage insurance must be made with the commissioner in accordance with this chapter and section 26.1-30-19.
  4. Eligibility and underwriting standards for occupants electing to purchase self-service storage insurance coverage must be established for the self-service storage insurance program.
  5. The owner is exempt from the examination and education requirements in chapter 26.1-26.

**26.1-26.9-04. Authority of owners.**

1. Employees and authorized representatives of an owner may sell, solicit, and offer self-service storage insurance to occupants and are not subject to licensure as an insurance producer under this chapter if:
  - a. The owner obtains a limited lines license to authorize the owner's employees and authorized representatives to sell, solicit, and offer self-service storage insurance under this chapter.
  - b. The owner files an acknowledgment with the commissioner in a form and manner directed by the commissioner that the owner's counter sales employees and authorized representatives act on the owner's behalf and the owner is responsible for any representations made by the counter sales employees or authorized representatives relating to the self-service storage insurance offered through the owner. The acknowledgment must state the commissioner may take any administrative action included in this title.
  - c. The insurer issuing the self-service storage insurance or a supervising entity supervises the development of a training program for employees and authorized representatives of the owner. The training required by this subdivision:
    - (1) Must be delivered to employees and authorized representatives of the owner who are engaged directly in the activity of selling, soliciting, or offering self-service storage insurance, and the training materials must

- be maintained by the owner and made available to the commissioner for inspection upon request.
- (2) Must include providing each employee and authorized representative with basic instruction about the self-service storage insurance offered to customers and the disclosures required under section 26.1-26.9-03; and
  - (3) May be provided in electronic form, provided the owner or supervising entity implements a supplemental education program regarding the self-service storage insurance conducted and overseen by a licensed producer.
- d. An employee or authorized representative of an owner may not advertise, represent, or otherwise be held out to the public as a nonlimited lines-licensed insurance producer, unless otherwise licensed.
2. An owner's employees and authorized representatives may not be paid directly by an insurance company, or be paid a commission or any other compensation for the sale of self-service storage insurance. This section does not prevent an owner from including the results of selling, soliciting, or offering self-service storage insurance in an overall performance compensation incentive program for employees and authorized representatives.
  3. The owner may bill and collect charges for self-service storage insurance coverage. Any charge to the occupant for coverage not included in the cost of the rental of a space must be separately itemized on the occupant's bill. If the self-service storage insurance coverage is included with the lease of a space, the owner clearly and conspicuously shall disclose to the occupant, on the rental invoice or elsewhere, any self-service storage insurance coverage included with the rental of a space. An owner billing and collecting the charges is not required to maintain the funds in a segregated account if the owner is authorized by the insurer to hold the funds in an alternative manner. All premiums received by an owner from an occupant for the sale of self-service storage insurance must be considered funds held by the owner in a fiduciary capacity for the benefit of the insurer. An owner may receive compensation for billing and collection services.

#### **26.1-26.9-05. Application for license and fees.**

1. An owner selling, soliciting, or offering self-service storage insurance shall apply to the commissioner.
2. In lieu of providing the information for all officers, directors, and shareholders owning more than ten percent of the applicant, the applicant shall provide the name, residential address, and other information required by the commissioner for an employee or officer of the owner or supervising entity designated by the applicant as the person responsible for the owner's compliance with the requirements of this chapter. However, if the owner derives more than fifty percent of the owner's revenue from the sale of self-service storage insurance, the information required under this subsection must be provided for all officers, directors, and shareholders of record having beneficial ownership of ten percent or more.
3. Each owner licensed under this chapter shall pay to the commissioner a fee as prescribed by the commissioner.

4. An owner selling, soliciting, or offering self-service storage insurance before the effective date of this Act shall apply for licensure within ninety days of the application being made available by the commissioner. An applicant that begins to sell, solicit, or offer self-service storage insurance after the effective date of this Act shall obtain a license before selling, soliciting, or offering self-service storage insurance.

#### **26.1-26.9-06. Authority of commissioner to investigate.**

Within a reasonable time after receipt of a properly completed application for a license under this chapter, the commissioner may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter the commissioner believes necessary or advisable to determine compliance with this chapter or for the protection of the public.

#### **26.1-26.9-07. Examination and investigation by commissioner.**

If the commissioner believes 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 outside this state, all books, records, and papers of the insurer or insurance producer, and may examine under oath, the officers, managers, and insurance producer of the insurer, or the insured, regarding the violation.

#### **26.1-26.9-08. License suspension, revocation, or refusal - Grounds.**

The commissioner may suspend, revoke, place on probation, or refuse to continue or issue a license issued under this chapter if, after notice to the licensee or applicant and a 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 cheated 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. 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 on a person's ability to serve the public as a licensee, or the commissioner finds, after conviction of an offense, 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 to be incompetent, untrustworthy, or financially irresponsible.
7. A misrepresentation of the terms of any actual or proposed insurance contract.
8. The licensee 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 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 fails to file the required returns or pay the taxes due under chapter 57-38 or comply with a court order directing payment of any income tax or employer income tax withholding imposed by chapter 57-38.

**26.1-26.9-09. Rulemaking authority.**

The commissioner may adopt reasonable rules for the implementation and administration of this chapter.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 241

### HOUSE BILL NO. 1468

(Representatives Mock, Beadle, Kasper, Porter, Roers Jones, D. Ruby)  
(Senators D. Larson, J. Lee, Mathern, Myrdal, Oban)

AN ACT to create and enact a new section to chapter 26.1-33 of the North Dakota Century Code, relating to life insurance policy disclosures; and to provide for application.

#### 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 of a child - Disclosure.**

A group life insurance policy issued in this state which insures the life of a newborn child of the certificate holder may not include a provision delaying coverage on the life of the newborn child for a specified period, unless the existence and length of the waiting period is prominently disclosed in the certificate or rider or otherwise disclosed by the group policyholder to a certificate holder at the time the certificate holder becomes eligible or enrolls for the coverage.

**SECTION 2. APPLICATION - NOTIFICATION.** Section 1 of this Act applies to life insurance policies issued in this state after July 31, 2019. The insurance commissioner shall require an insurer with a life insurance policy issued before the effective date of this Act, which contains a waiting period, notify the certificate holder of the existence of that waiting period or notify the group policyholder, which upon receipt of such notice shall notify the certificate holders of the existence of that waiting period.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 242

### SENATE BILL NO. 2118

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact section 26.1-36-49 of the North Dakota Century Code, relating to short-term limited-duration health insurance plans; and to amend and reenact subsections 2 and 3 of section 26.1-36.4-02 of the North Dakota Century Code, relating to short-term limited-duration health insurance plans.

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

**SECTION 1.** Section 26.1-36-49 of the North Dakota Century Code is created and enacted as follows:

#### **26.1-36-49. Short-term limited-duration health insurance plans.**

1. As used in this section, "short-term limited-duration health insurance plan" means health insurance coverage provided pursuant to an insurance policy or group certificate of insurance that has an expiration date specified in the policy which is no longer than six months after the original effective date of the policy and, taking into account any renewals or extensions, has a duration of not more than twelve months in total.
2. To the extent other state laws do not conflict with this section, any policy or rider advertised, marketed, or offered as a short-term limited-duration health insurance plan must comply with this section and all other applicable state insurance laws.
3. An insurer issuing a policy or certificate under this chapter shall provide, at the insured's option, for renewal or continuation of coverage. The renewal or continuation of coverage period may not extend for more than twelve months from the original effective date of the policy.
4. An insured may not be subject to additional underwriting at renewal or continuation of coverage and shall remain within the same risk class as of the original effective date of the policy.
5. An insurer shall provide a notice of termination of the policy or certificate to the insured at least fifteen days before renewal or end of the policy term.
6. All marketing materials related to the offering or sale of a short-term limited-duration health insurance plan must be filed with and approved by the commissioner before the plan is offered for sale in this state.
7. Sale of a policy for short-term limited-duration health insurance plan is only allowed through a licensed and properly appointed insurance producer. An insurance producer's signature and identification number must be included on the prospective insured's application.

8. A phone call made to a prospective insured relating to the marketing or sale of a short-term limited-duration health insurance plan must be recorded and maintained by the producer or the insurer for a period of no less than one year after the termination date of the policy.

**SECTION 2. AMENDMENT.** Subsections 2 and 3 of section 26.1-36.4-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Policy" means any health benefit plan as defined in section 26.1-36.3-01, whether offered on a group or individual basis. The term does not include short-term ~~major-medical-policies~~limited-duration health insurance plans offered in the individual market.
3. "Short-term ~~limited-duration health insurance plan~~", except as required by the Health Insurance Portability and Accountability Act of 1996, ~~means a policy or plan providing coverage for one hundred eighty-five days or less~~is defined by section 26.1-36-49.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 243

### HOUSE BILL NO. 1106

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact chapter 26.1-36.7 of the North Dakota Century Code, relating to the establishment of an invisible reinsurance pool for the individual health insurance market; to amend and reenact subsection 2 of section 26.1-03-17 of the North Dakota Century Code, relating to premium taxes and credits for insurance companies; to provide for a legislative management study; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 26.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 3 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit against the tax due for the amount of any assessment paid as a member of the reinsurance association of North Dakota under section 26.1-36.7-06 for which the member may be liable for the year in which the assessment is paid, a credit as provided under section 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, 26.1-03-19.6, 26.1-03-22, 26.1-17-32, and 26.1-18.1-18, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

**SECTION 2.** Chapter 26.1-36.7 of the North Dakota Century Code is created and enacted as follows:

#### **26.1-36.7-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Association" means the reinsurance association of North Dakota.
2. "Board" means the board of directors of the reinsurance association of North Dakota.
3. "Earned group health benefit plan premiums" means premium owed to an insurer for a period of time during which the insurer has been liable to cover

claims for an insured pursuant to the terms of a group health benefit plan issued by the insurer.

4. "Future losses" means reserves for claims incurred but not reported.
5. "Group health benefit plan" means a health benefit plan offered through an employer, or an association of employers, to more than one individual employee.
6. "Health benefit plan" means any hospital and medical expense-incurred policy or certificate, nonprofit health care service plan contract, health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes benefits that pay the costs of or provide medical, surgical, or hospital care.
  - a. "Health benefit plan" does not include any one or more of the following:
    - (1) Coverage only for accident or disability income insurance, or any combination of the two;
    - (2) Coverage issued as a supplement to liability insurance;
    - (3) Liability insurance, including general liability insurance and automobile liability insurance;
    - (4) Workforce safety and insurance or similar workers' compensation insurance;
    - (5) Automobile medical payment insurance;
    - (6) Credit-only insurance;
    - (7) Coverage for onsite medical clinics;
    - (8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits; and
    - (9) Self-funded plans.
  - b. "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:
    - (1) Limited scope dental or vision benefits;
    - (2) Benefits for long-term care, nursing home care, home health care, or community-based care, or any combination of this care; and
    - (3) Other similar limited benefits specified under federal regulations issued under the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.].
  - c. "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance; there is no coordination between the provision of the benefits; and any

exclusion of benefits under any group health insurance coverage maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same sponsor:

- (1) Coverage only for specified disease or illness; and
- (2) Hospital indemnity or other fixed indemnity insurance.

d. "Health benefit plan" does not include the following if offered as a separate policy, certificate, or contract of insurance:

- (1) Medicare supplement health insurance as defined under section 1882(g)(1) of the federal Social Security Act [42 U.S.C. 13295ss(g)(1)];
- (2) Coverage supplemental to the coverage provided under chapter 55 of United States Code title 10 [10 U.S.C. 1071 et seq.] relating to armed forces medical and dental care; and
- (3) Similar supplemental coverage provided under a group health plan.

7. "Individual health benefit plan" means a health benefit plan offered to individuals, other than in connection with a group health benefit plan. The term does not include short-term limited-duration health insurance as defined by section 26.1-36-49.
8. "Insured" means an individual who is insured by a health benefit plan.
9. "Insurer" means an entity authorized to write health benefit plans or that provides health benefit plans in the state. The term includes an insurance company as defined in section 26.1-02-01, a nonprofit health service organization, a fraternal benefit society, and a health maintenance organization.
10. "Member insurer" means an insurer that offers individual health benefit plans and is actively marketing individual health benefit plans in this state.

#### **26.1-36.7-02. Waiver proposal and application.**

1. The commissioner may develop a proposal for an innovation waiver under section 1332 of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148; 119 Stat. 124; 42 U.S.C. 1801 et seq.].
2. On behalf of the state, in accordance with the proposal developed under subsection 1, the commissioner may submit an application to the United States department of health and human services and to the United States secretary of the treasury. The commissioner may implement any federally approved waiver.

#### **26.1-36.7-03. Reinsurance association of North Dakota.**

1. The reinsurance association of North Dakota is established as a nonprofit legal entity. As a condition of writing health insurance business in this state, an insurer that has issued or administered a group health benefit plan within the

previous twelve months or is actively marketing or administering a group health benefit plan in this state shall participate in the association.

2. The association may begin operation on either:
  - a. The January first following the date the commissioner certifies to the secretary of state and the legislative council that the state's innovation waiver application has been approved by the federal government pursuant to section 1332 of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148; 119 Stat. 124; 42 U.S.C. 1801 et seq.]; or
  - b. The January first following the date the commissioner certifies to the secretary of state and the legislative council that the Patient Protection and Affordable Care Act [Pub. L. 111-148] has been repealed, amended, or finally adjudicated by a court of law with jurisdiction over North Dakota as invalid or in a manner that makes the granting of an innovation waiver unnecessary or inapplicable.
3. If the federal funding associated with an approved innovation waiver under section 1332 of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148; 119 Stat. 124; 42 U.S.C. 1801 et seq.] is terminated or otherwise discontinued, the commissioner may cease or suspend operations of the reinsurance association of North Dakota beginning on the January first following the date the commissioner notifies the board that federal funding has been terminated or otherwise discontinued.

#### **26.1-36.7-04. Board of directors.**

1. The association is governed by the board of directors of the reinsurance association of North Dakota.
2. The board consists of the state health officer, one senator appointed by the majority leader of the senate of the legislative assembly, one representative appointed by the speaker of the house of representatives of the legislative assembly, one individual from each of the four insurers of the association with the highest annual market share as determined by annual market share reports of health benefit plans provided by the commissioner annually, and two nonvoting members from the insurance department appointed by the commissioner.
3. Members of the board may be reimbursed from the moneys of the association for expenses incurred by the members due to their service as board members, but may not otherwise be compensated by the association for board services.
4. The costs of conducting the meetings of the association and the board are borne by the association.
5. For cause, the commissioner may remove any board member representing one of the four insurers.

#### **26.1-36.7-05. Powers and duties of commissioner and board.**

1. The commissioner shall:
  - a. Perform all functions necessary for the association to carry out the purposes of this chapter; and



- b. Approve any assessments to the insurers writing or otherwise issuing group health benefit plans. A group health benefit plan issued pursuant to chapter 54-52.1 is exempt from the assessment.
2. The board shall:
  - a. Formulate general policies to advance the purposes of this chapter;
  - b. Schedule and approve independent biennial audits in order to:
    - (1) Ensure claims are being processed appropriately and only include services covered by the individual health benefit plan for the contracted rates; and
    - (2) Verify that the assessment base is accurate and that the appropriate percentage was used to calculate the assessment;
  - c. Approve bylaws and operating rules; and
  - d. Provide for other matters as may be necessary and proper for the execution of the commissioner's and board's powers, duties, and obligations.
3. The commissioner and the members of the board are not liable for any obligations of the association.

#### **26.1-36.7-06. Assessments against insurers.**

1. For the purpose of providing the funds necessary to carry out the purposes of the association under this chapter, the commissioner shall assess insurers writing or otherwise issuing group health benefit plans based on the insurer's group health benefit plan premium written in this state. The assessment must be paid quarterly within forty-five days of the end of the previous quarter on all earned group health benefit plan premiums for the previous calendar quarter. An assessment not paid within forty-five days of the end of the previous quarter accrues interest at twelve percent per annum beginning on the date due.
2. The commissioner may verify the amount of each insurer's assessment based on annual statements and other reports determined to be necessary by the commissioner. The commissioner may use any reasonable method of estimating an insurer's group health benefit plan premium if the specific number is not reported to the commissioner.
3. Any federal funding obtained by the association must be used to reduce the assessments of insurers writing or otherwise issuing group health benefit plans pursuant to this section.
4. Before April second of each year, the association shall determine and report to the board the association's net gains or net losses for the previous calendar year.
5. Before April sixteenth of each year, the association shall provide an estimate to the commissioner and the board of the amount of assessments needed for the association to carry out the powers and duties of the association under this chapter.

6. Before May second of each year, the board may provide a recommendation to the commissioner and the board of the amount of assessments needed for the association to carry out the powers and duties of the association under this chapter.
7. An insurer may apply to the commissioner for a deferral of all or part of an assessment imposed by the association under this section. The commissioner may defer all or part of the assessment if the commissioner determines the payment of the assessment would place the insurer in a financially impaired condition. If all or part of the assessment is deferred, the amount deferred must be assessed against other insurers in a proportionate manner consistent with this section. The insurer that receives a deferral remains liable to the association for the amount deferred and is prohibited from reinsuring any person through the association until such time as the insurer pays the assessments.
8. The board shall use any surplus, including any interest earned on the surplus, to:
  - a. Offset future losses;
  - b. Reduce future assessments to insurers writing or otherwise issuing group health benefit plans; or
  - c. Pay off a line of credit issued pursuant to section 26.1-36.7-07.
9. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment. As an alternative, the commissioner may levy a penalty on any member insurer that fails to pay an assessment when due. In addition, the commissioner may use any power granted to the commissioner by this title to collect any unpaid assessment.

#### **26.1-36.7-07. Bank of North Dakota line of credit.**

The Bank of North Dakota shall extend to the association a line of credit not to exceed twenty-five million dollars. The association shall repay the line of credit from assessments against insurers writing or otherwise issuing group health benefit plans in this state or from other funds appropriated by the legislative assembly. The association may access the line of credit to the extent necessary to provide reimbursements to member insurers as required by this chapter.

#### **26.1-36.7-08. Reinsurance.**

For claims of an insured which total one hundred thousand dollars to one million dollars incurred per plan year, a member insurer must be reinsured by the association at seventy-five percent of the member insurer's responsibility for claims incurred by the insured pursuant to the terms of an individual's nongrandfathered individual health benefit plan.

#### **26.1-36.7-09. Reimbursement of member insurer.**

For nongrandfathered individual health benefit plans issued or renewed after the November second preceding to the date the association begins operation, a member insurer may seek reimbursement from the association and the association shall reimburse the member insurer pursuant to the provisions of section 26.1-36.7-08 to

the extent the claims incurred by the insured and submitted by the member insurer to the association are eligible for coverage and reimbursement according to the terms of insured's individual health benefit plan.

**26.1-36.7-10. Rulemaking.**

The commissioner may adopt rules for the implementation and administration of this chapter.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HEALTH INSURANCE PREMIUM TREND.** During the 2019-20 interim, the legislative management shall study ways the state may be able to positively affect the current trend of health insurance premium rates increasing, with a focus on the high-risk and subsidized markets. The study must be solution based to reduce costs and may include consideration of whether a strict managed care model might be effective. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 4. EXPIRATION DATE.** This Act is effective through December 31, 2021, and after that date is ineffective.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 18, 2019

Filed April 19, 2019

## CHAPTER 244

### HOUSE BILL NO. 1116

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-38.1-01, 26.1-38.1-02, 26.1-38.1-03, 26.1-38.1-04, 26.1-38.1-05, 26.1-38.1-06, 26.1-38.1-08, 26.1-38.1-09, 26.1-38.1-10, 26.1-38.1-11, 26.1-38.1-13, 26.1-38.1-14, and 26.1-38.1-16 of the North Dakota Century Code, relating to the North Dakota life and health insurance guaranty association; to repeal section 26.1-38.1-17 of the North Dakota Century Code, relating to application of laws to an insolvent insurer; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 26.1-38.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-38.1-01. Scope Coverage and limitations.**

1. This section provides coverage for the policies and contracts specified in subsection 2:
  - a. To persons, except for nonresident certificate holders under group policies or contracts, who, regardless of where they reside, are the beneficiaries, assignees, or payees, including health care providers rendering services covered under health insurance policies or certificates, of the persons covered under subdivision b.
  - b. To persons who are owners of or certificate holders or enrollees under such policies or contracts other than unallocated annuity contracts and structured settlement annuities, and in each case who:
    - (1) Are residents; or
    - (2) Are not residents, but only under all of the following conditions:
      - (a) The member insurer that issued such policies or contracts is domiciled in this state;
      - (b) The states in which the persons reside have associations similar to the association created under this chapter; and
      - (c) The persons are not eligible for coverage by an association in any other state ~~due to the fact that~~ because the insurer or the health maintenance organization was not licensed in the state at the time specified in the state's guaranty association law.
  - c. For any unallocated annuity contract specified in subsection 2, subdivisions a and b do not apply, and this chapter, except as provided in subdivisions e and f, provides coverage to:

- (1) Persons who are the owners of the unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan, the sponsor of which has its principal place of business in this state; and
  - (2) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents.
- d. For structured settlement annuities specified in subsection 2, subdivisions a and b do not apply, and this chapter, except as provided in subdivisions e and f, provides coverage to a person who is a payee under a structured settlement annuity or beneficiary of a payee if the payee is deceased, if the payee:
- (1) Is a resident, regardless of where the contract owner resides; or
  - (2) Is not a resident, and:
    - (a) The contract owner of the structured settlement annuity is a resident, or the contract owner of the structured settlement annuity is not a resident but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created under this chapter; and
    - (b) Neither the payee or beneficiary nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides.
- e. This chapter does not provide coverage to:
- (1) A person who is a payee or beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state; ~~or~~
  - (2) A person covered under subdivision ~~b~~c, if any coverage is provided by the association of another state to the person; or
  - (3) A person who acquires rights to receive payments through a structured settlement factoring transaction as defined in section 5891(c)(3)(A) of title 26 of the United States Code, regardless of whether the transaction occurred before or after this federal law became effective.
- f. This chapter provides coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person may not be provided coverage under this chapter. In determining the application of the provisions of this subdivision in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, enrollee, beneficiary, or assignee, this chapter must be construed in conjunction with other state laws to result in coverage by only one association.
2. This chapter provides coverage to the persons specified in subsection 1 for policies or contracts of direct, nongroup life insurance, health insurance, which

for the purposes of this chapter includes health maintenance organization subscriber contracts and certificates, or annuity policies or contracts annuities, and supplemental contracts to any of these, for certificates under direct group policies and contracts, and supplemental contracts to any of these and for unallocated annuity contracts issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries, and any immediate or deferred annuity contracts.

3. This Except for the portion of a policy or contract, including a rider, which provides long-term care or any other health insurance benefits, this chapter does not provide coverage for:
- a. Any portion of a policy or contract not guaranteed by the member 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 member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, 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 prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; and
    - (2) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, 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. 4144~~ section 1144 of title 29 of the United States Code;
    - (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~~the 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~~the 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 or otherwise not permitted 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 member insurer to the enrollee, certificate holder, 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 member insurer without meeting applicable policy or contract form filing or approval requirements;
  - (3) Misrepresentations of or regarding policy or contract benefits;
  - (4) Extracontractual claims; or
  - (5) A claim for penalties or consequential or incidental damages;
- 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;
- 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; and
- m. A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to part C or part D of subchapter XVIII; of chapter 7 of title 42 of the United States Code (, commonly known as Medicare part C and part D), or subchapter XIX of chapter 7 of title 42 of the United States Code; commonly known as Medicaid, or any regulations issued pursuant thereto; and
- n. Structured settlement annuity benefits to which a payee or beneficiary has transferred the payee's or beneficiary's rights in a structured settlement factoring transactions, as defined in section 5891(c)(3)(A) of title 26 of the United States Code, regardless of whether the transaction occurred before or after this federal law became effective.
4. The benefits that the association may become obligated to cover may in no event exceed the lesser of:
- a. The contractual obligations for which the member insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or
- b. (1) With any respect to one life, regardless of the number of policies, or contracts:
- (a) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;
- (b) ~~For~~ health insurance benefits:
- [1] One hundred thousand dollars for coverages not defined as disability income insurance or ~~basic hospital, medical, and surgical insurance or major medical insurance~~health benefit plans or long-term care insurance, including any net cash surrender and net cash withdrawal values.
- [2] Three hundred thousand dollars for disability income insurance, and three hundred thousand dollars for long-term care insurance.
- [3] Five hundred thousand dollars for ~~basic hospital, medical, and surgical insurance or major medical insurance~~health benefit plans.
- (c) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.
- (2) With respect to each individual participating in a government retirement benefit plan established under section 401(k), 403(b), or



457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, two hundred fifty thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values.

- (3) With respect to each payee of a structured settlement annuity or beneficiary, or beneficiaries of the payee if deceased, two hundred fifty thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any.
  - (4) However, in no event shall the association be obligated to cover more than:
    - (a) An aggregate of three hundred thousand dollars in benefits with respect to any one life under paragraphs 1, 2, and 3 of subdivision b except with respect to the benefits for ~~basic hospital, medical, and surgical insurance and major medical insurance~~ health benefit plans under subparagraph b of paragraph 1 of subdivision b, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or
    - (b) With respect to one owner of multiple nongroup policies of life insurance, whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits, regardless of the number of policies and contracts held by the owner.
  - (5) With respect to either one contract owner provided coverage under ~~subparagraph c~~ of paragraph 2 of subdivision b ~~c~~ of subsection 1; or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in paragraph 2 of subdivision b, five million dollars in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case in which one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage must be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state and in no event is the association obligated to cover more than five million dollars in benefits with respect to all these unallocated contracts.
  - (6) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.
5. In performing its obligations to provide coverage under this chapter, the association is not required to guarantee, assume, reinsure, reissue, or

perform, or cause to be guaranteed, assumed, reinsured, reissued, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

6. For purposes of this chapter, benefits provided by a long-term care rider to a life insurance policy or annuity contract must be considered the same type of benefits as the related base life insurance policy or annuity contract.

**SECTION 2. AMENDMENT.** Section 26.1-38.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-02. Definitions.**

As used in this chapter:

1. "Account" means either of the two accounts created under section 26.1-38.1-03.
2. "Association" means the North Dakota life and health insurance guaranty association created under section 26.1-38.1-03.
3. "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed under which an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.
4. "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.
5. "Called assessment" or "called" when used in the context of assessments means that a notice was issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.
6. "Commissioner" means the insurance commissioner of this state.
7. "Contractual obligation" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section 26.1-38.1-01.
8. "Covered contract" or "covered policy" means any policy or contract or portion of a policy or contract for which coverage is provided under this chapter.
9. "Extracontractual claims" include claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney's fees and costs.
10. "Health benefit plan" means any hospital or medical expense policy or certificate, any health maintenance organization subscriber contract, or any other similar health contract. The term does not include:
  - a. Accident only insurance;
  - b. Credit insurance;

- c. Dental only insurance;
  - d. Vision only insurance;
  - e. Medicare supplement insurance;
  - f. Benefits for long-term care, home health care, community-based care, or any combination of these benefits;
  - g. Disability income insurance;
  - h. Coverage for onsite medical clinics; or
  - i. Specified disease, hospital confinement indemnity, or limited health insurance, if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates.
11. "Impaired insurer" means a member insurer that, after July 1, 1989, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
- 44-12. "Insolvent insurer" means a member insurer which, after July 1, 1989, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
- 42-13. "~~Member insurer~~" means ~~any insurer, including a nonprofit health service corporation, or health maintenance organization~~ licensed or which holds a certificate of authority to transact in this state any kind of insurance or health maintenance organization business for which coverage is provided under section 26.1-38.1-01, ~~and. The term~~ includes any insurer or health maintenance organization whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:
- a. ~~A health maintenance organization;~~
  - b. ~~A fraternal benefit society;~~
  - e-d. A mandatory state pooling plan;
  - d-c. A mutual assessment company or other person that operates on an assessment basis;
  - e. ~~A nonprofit health service corporation that is participating in a reinsurance plan that has been approved by the commissioner as an alternative to participation in the state guaranty association;~~
  - f-d. An insurance exchange;
  - g-e. An organization that has a certificate or license limited to the issuance of charitable gift annuities under sections 26.1-34.1-01 through 26.1-34.1-07; or
  - h-f. Any entity similar to any of the above.

- ~~43-14.~~ "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, incorporated, or any successor thereto.
- ~~44-15.~~ "Owner" of a policy or contract and "policyholder", "policy owner", and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the member insurer. The terms owner, contract owner, policyholder, and policy owner do not include persons with a mere beneficial interest in a policy or contract.
- ~~45-16.~~ "Person" means any individual, corporation, limited liability company, partnership, association, governmental entity, or voluntary organization.
- ~~46-17.~~ "Plan sponsor" means:
- a. The employer in the case of a benefit plan established or maintained by a single employer;
  - b. The employee organization in the case of a benefit plan established or maintained by an employee organization; or
  - c. In the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.
- ~~47-18.~~ "Premiums" means amounts or considerations, by whatever name called, received ~~in any calendar year~~ on covered policies or contracts less returned premiums, considerations, and deposits, and less dividends and experience credits. "Premiums" do not include any amounts or considerations received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsections 2 and 3 of section 26.1-38.1-01 and except that assessable premium shall not be reduced on account of subdivision c of subsection 3 of section 26.1-38.1-01, relating to interest limitations, and subsection 3 of section 26.1-38.1-01, relating to limitations with respect to any one individual, any one participant, and any one policy or contract owner. "Premiums" do not include:
- a. Premiums in excess of five million dollars on any unallocated annuity contract not issued under a governmental retirement plan established under section 401(k), 403(b), or 457 of the United States Internal Revenue Code; or
  - b. With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy or contract owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

- 18-19. a.** "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the following factors: the state in which the primary executive and administrative headquarters of the entity is located; the state in which the principal office of the chief executive officer of the entity is located; the state in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings; the state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings; the state from which the management of the overall operations of the entity is directed; and in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors. However, in the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state is deemed to be the principal place of business of the plan sponsor.
- b.** The principal place of business of a plan sponsor of a benefit plan described in subdivision c of subsection 4617 is deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, is deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.
- 19-20.** "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the member insurer.
- 20-21.** "Resident" means any person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person must be its principal place of business. Citizens of the United States who are residents of foreign countries, or residents of United States possessions, territories, or protectorates that do not have an association similar to the association created under this chapter, are deemed residents of the state of domicile of the member insurer that issued the policies or contracts.
- 21-22.** "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.
- 22-23.** "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

- 23-24. "Supplemental contract" means any written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or a life, health, or annuity contract.
- 24-25. "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

**SECTION 3. AMENDMENT.** Section 26.1-38.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-03. Creation of the association.**

1. There is created a nonprofit legal entity to be known as the North Dakota life and health insurance guaranty association. All member insurers must be and remain members of the association as a condition of their authority to transact insurance or a health maintenance organization business in this state. The association shall perform its functions under the plan of operation established and approved under section 26.1-38.1-07 and shall exercise its powers through a board of directors established under section 26.1-38.1-04. For purposes of administration and assessment, the association shall maintain two accounts:
  - a. The life insurance and annuity account that includes the following subaccounts:
    - (1) Life insurance account;
    - (2) Annuity account, which includes annuity contracts owned by a governmental retirement plan or its trustee established under section 401, 403(b), or 457 of the United States Internal Revenue Code, but otherwise excludes unallocated annuities; and
    - (3) Unallocated annuity account that excludes contracts owned by a governmental retirement benefit plan or its trustee established under section 401, 403(b), or 457 of the United States Internal Revenue Code.
  - b. The health insurance account.
2. The association shall come under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

**SECTION 4. AMENDMENT.** Section 26.1-38.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-04. Board of directors.**

1. The board of directors of the association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. The insurer members of the board must be selected by member insurers, subject to the approval of the commissioner. Vacancies on the board must be filled for the remaining period of the term by a majority vote of the

remaining board members, for member insurers, subject to the approval of the commissioner. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights of the organizational meeting, each member insurer is entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the commissioner may appoint the initial members.

2. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.
3. Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board may not otherwise be compensated by the association for their services.

**SECTION 5. AMENDMENT.** Section 26.1-38.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-05. Powers and duties of the association.**

1. If a member insurer is an impaired insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, and that are approved by the commissioner:
  - a. Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the policies or contracts of the impaired insurer; or
  - b. Provide such moneys, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision a and assure payment of the contractual obligations of the impaired insurer pending action under subdivision a.
2. If a member insurer is an insolvent insurer, the association, in its discretion, either shall:
  - a. ~~Provide the moneys, pledges, loans, notes, guarantees, or other means as are reasonably necessary to:~~
    - (1) ~~Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the policies or contracts of the insolvent insurer; or~~
    - (2) ~~Assure payment of the contractual obligations of the insolvent insurer; or~~
  - ~~b-c. Provide moneys, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties; or~~
  - d. Provide benefits and coverage in accordance with the following provisions:
    - (1) ~~With respect to life and health insurance policies and annuities, policies and contracts, assure payment of benefits for premiums identical to the~~

~~premiums and benefits, except for terms of conversion and renewability;~~ that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

- (a) With respect to group policies and contracts, not later than the earlier of the next renewal date under ~~such~~those policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to ~~such~~the policies and contracts.
  - (b) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under such policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to ~~such~~the policies or contracts.
- (2) Make diligent efforts to provide all known insureds, enrollees, or annuitants for nongroup policies and contracts, or group policy or contract owners with respect to group policies and contracts, thirty days' notice of the termination pursuant to paragraph 1 of the benefits provided.
  - (3) With respect to nongroup ~~life and health insurance~~ policies and ~~annuities~~contracts covered by the association, make available to each known insured, enrollee, or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly an insured, enrollee, or ~~formerly an~~ annuitant under a group policy or contract who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph 4, if the insureds, enrollees, or annuitants had a right under law or the terminated policy, contract, or annuity to convert coverage to individual coverage or to continue an individual policy, contract, or annuity in force until a specified age or for a specified time, during which the insurer or health maintenance organization had no right unilaterally to make changes in any provision of the policy, contract, or annuity or had a right only to make changes in premium by class.
    - (a) In providing the substitute coverage required under this paragraph, the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract at actuarially justified rates, subject to the prior approval of the commissioner.
    - (b) Alternative or reissued policies or contracts shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy or contract.
    - (c) The association may reinsure any alternative or reissued policy or contract.
  - (4) Alternative policies or contracts adopted by the association shall be subject to the approval of the ~~domiciliary insurance~~ commissioner and the receivership court. The association may adopt alternative policies



- or contracts of various types for future issuance without regard to any particular impairment or insolvency.
- (5) Alternative policies or contracts must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy or contract was last underwritten.
  - (6) Any alternative policy or contract issued by the association shall provide coverage of a type similar to that of the policy or contract issued by the impaired or insolvent insurer, as determined by the association.
  - (7) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract, the premium must be actuarially justified and set by the association in accordance with the amount of insurance or coverage provided and the age and class of risk, subject to prior approval of the ~~domiciliary insurance commissioner and the receivership court.~~
  - (8) The association's obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date ~~such~~the coverage or policy or contract is replaced by another similar policy or contract by the policy or contract owner, the insured, the enrollee, or the association.
3. When proceeding under subsection 2 with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subdivision c of subsection 3 of section 26.1-38.1-01.
  4. Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract ~~or~~ substitute coverage terminates the association's obligations under ~~such~~the policy, contract, or coverage under this chapter with respect to ~~such~~the policy, contract, or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.
  5. Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, ~~and. If the liquidator of an insolvent insurer requests,~~ the association shall provide a report to the liquidator regarding the premium collected by the association. The association is liable for unearned premiums due to policy or contract owners arising after the entry of ~~such~~the order.
  6. The protection provided by this chapter does not apply when any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

7. In carrying out its duties under subsection 2, the association may:
  - a. Subject to approval by a court in this state, impose permanent policy or contract liens in connection with any guarantee assumption or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest.
  - b. Subject to approval by a court in this state, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral or cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.
8. A deposit in this state, held according to law or as required by the commissioner for the benefits of creditors, including policy or contract owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of ~~an~~ a member insurer domiciled in this state or in a reciprocal state, under section 26.1-06.1-50, must be paid promptly to the association. The association may retain a portion of any amount received equal to the percentage determined by dividing the aggregate amount of policy or contract owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy or contract owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association and, less the amount retained pursuant to this subsection. Any amount paid to the association ~~less the amount~~ and retained by it is treated as a distribution of estate assets pursuant to section 26.1-06.1-43 or similar provision of the state of domicile of the impaired or insolvent insurer.
9. If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subsection 2, the commissioner shall have the powers and duties of the association under this chapter with respect to insolvent insurers.
10. The association may render assistance and advice to the commissioner, upon request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.
11. The association shall have standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired or insolvent insurer

concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Such standing extends to all matters germane to the powers and duties of the association, including proposals for reinsuring, reissuing, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

12. Any person receiving benefits under this chapter must be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative policies, contracts, or coverages. The association may require an assignment to it of such rights and causes of action by any enrollee, payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon such person.
13. The subrogation rights of the association under this section have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.
14. In addition to subsections 12 and 13, the association shall have all common-law rights of subrogation and other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, enrollee, or payee of a policy or contract with respect to such policy or contract, including, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this chapter, against a person originally or by succession responsible for the losses arising from ~~or payment for~~ the personal injury relating to the annuity or payment for the personal injury, except any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the Internal Revenue Code.
15. If subsections 12, 13, and 14 are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations must be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or contracts or portion of the policies or contracts covered by the association. If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in the preceding paragraphs of this subsection, the person shall pay to the association the portion of the recovery attributable to the policies or contracts or portion of the policies or contracts covered by the association.
16. In addition to any other rights and powers under this chapter, the association may:

- a. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;
  - b. Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 26.1-38.1-06 and to settle claims or potential claims against it;
  - c. Borrow money to effect the purposes of this chapter and any notes or other evidences of indebtedness of the association not in default shall be legal investments for domestic member insurers and may be carried as admitted assets;
  - d. Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this chapter;
  - e. Take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;
  - f. Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the ~~power~~powers of a domestic life ~~or~~insurer, health insurer, or health maintenance organization, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter;
  - g. Organize itself as a corporation or in other legal form permitted by the laws of this state;
  - h. Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this chapter with respect to the person, and the person promptly shall comply with the request; ~~and~~
  - i. Unless prohibited by law, in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which the association provides coverage under this chapter; and
  - j. Take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.
17. The association may join an organization of one or more state associations of similar purposes, to further the purposes and administer the powers and duties of the association.
  18. At any time within one year after the date on which the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of the member insurer which accrue on or after this coverage date and which relate to contracts covered in whole or in part by the association under any indemnity reinsurance agreement entered by the member insurer as a ceding insurer and selected by the association. However, the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer previously and expressly has disaffirmed the reinsurance agreement. The election is effected by a notice to the receiver, rehabilitator, or

liquidator and to the affected reinsurers. If the association makes an election, subdivisions a through d apply with respect to the agreements selected by the association.

- a. The association is responsible for all unpaid premiums due under the agreements, for periods both before and after the coverage date, and is responsible for the performance of all other obligations to be performed after the coverage date, in each case which relate to contracts covered, in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association.
  - b. The association is entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part, provided that, upon receipt of any of these amounts, the association is obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of the amount received by the association, over the benefits paid by the association on account of the policy or contract less the retention of the impaired or insolvent member insurer applicable to the loss or event.
  - c. Within thirty days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to every item paid by the member insurer or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. The association or indemnity reinsurer shall pay the net balance due the other within five days of the completion of the aforementioned calculation. If the receiver, rehabilitator, or liquidator received any amounts due the association pursuant to subdivision b, the receiver, rehabilitator, or liquidator shall remit the amounts to the association as promptly as practicable.
  - d. If the association, within sixty days of the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association, in whole or in part, the reinsurer may not terminate the reinsurance agreements, to the extent the agreements relate to contracts covered by the association, in whole or in part, and may not set off any unpaid premium due for periods before the coverage date against amounts due the association.
19. If the association transfers its obligations to another insurer, and if the association and the other insurer agree, the other insurer shall succeed to the rights and obligations of the association under subsection 18 effective as of the date agreed by the association and the other insurer and regardless of whether the association made the election, provided that:
- a. The indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;

- b. The obligations described in the proviso to subdivision b of subsection 18 no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third-party insurer; and
  - c. This subsection does not apply if the association previously expressly determined in writing that it will not exercise the election referred to in subsection 18.
20. Subsections 18 and 19 supersede the provisions of any law of this state or of any affected reinsurance agreement~~contract~~ that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, rehabilitator, or liquidator, of the insolvent member insurer. The receiver, rehabilitator, or liquidator remains entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur in periods before the coverage date, subject to applicable setoff provisions.
21. Except as otherwise expressly provided in this section, this section does not alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. This section does not abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. This section does not give a policy owner, contract owner, enrollee, certificate holder, or beneficiary an independent claim for relief against an indemnity reinsurer which is not otherwise set forth in the indemnity reinsurance agreement.
22. The board of directors of the association has discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this chapter in an economical and efficient manner.
23. If the association arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.
24. Burleigh County is the venue in a course of action against the association arising under this chapter. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.
25. ~~Subject to approval of the receivership court, the~~The association, in carrying out association duties in connection with guaranteeing, assuming, reissuing, or reinsuring policies or contracts under subsections ~~21~~ and ~~32~~, 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 for in the ~~replaced~~original 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.

**SECTION 6. AMENDMENT.** Section 26.1-38.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-06. Assessments.**

1. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments must be due not less than thirty days after prior written notice to the member insurers and must accrue interest at eighteen percent per annum on and after the due date.
2. There must be two classes of assessment, as follows:
  - a. Class A assessments must be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.
  - b. Class B assessments must be authorized and called to the extent necessary to carry out the powers and duties of the association under section 26.1-38.1-05 with regard to an impaired or insolvent insurer.
3. The amount of any class A assessment must be determined at the discretion of the board of directors and must be authorized and called on a non-pro rata basis.
4. The amount of any class B assessment, except for assessments related to long-term care insurance, must be allocated for assessment purposes amongbetween the accounts and among the subaccounts of the life insurance and annuity account, pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.
5. The amount of the class B assessment for long-term care insurance written by the impaired or insolvent insurer must be allocated according to a methodology included in the plan of operation and approved by the commissioner. The methodology must provide for fifty percent of the assessment to be allocated to accident and health member insurers and fifty percent to be allocated to life and annuity member insurers.
6. Class B assessments against member insurers for each account and subaccount must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the member insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available

preceding the year in which the member insurer became impaired, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

- 6-7. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection 2 and computation of assessments under this section must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.
- 7-8. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral are removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.
- 8-9. a. Subject to subdivision b, the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account may not in any one calendar year exceed two percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the three calendar years preceding the year in which the member insurer became an impaired or insolvent insurer.
- b. If two or more assessments are authorized in one calendar year with respect to member insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subdivision a must be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated pursuant to this section.
- c. If the maximum assessment, together with the other assets of the association in an account, does not provide in one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon after as permitted under this chapter.
- 9-10. The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.
- 10-11. If the maximum assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection 74, the board



shall assess the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subsection 89.

- 44-12. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future claims.
- 42-13. It is proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance or health maintenance organization business within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.
- 43-14. The association shall issue to each member insurer paying an assessment under this chapter, other than a class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the member insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.
- 44-15. a. A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment must be available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment must be accompanied by a statement in writing that the payment is made under protest and must set forth a brief statement of the grounds for the protest.
- b. Within sixty days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.
- c. Within thirty days after a final decision was made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.
- d. In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.
- e. If the protest or appeal on the assessment is upheld, the amount paid in error or excess must be returned to the member insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the association.

~~45-16.~~ The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall comply promptly with a request.

**SECTION 7. AMENDMENT.** Section 26.1-38.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-08. Duties and powers of the commissioner.**

In addition to the duties and powers enumerated elsewhere in this chapter:

1. The commissioner shall:
  - a. Upon request of the board of directors, provide the association with a statement of premiums in this and any other appropriate states for each member insurer;
  - b. When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer constitutes notice to its shareholders, if any; and the failure of the impaired insurer to promptly comply with such demand does not excuse the association from the performance of its powers and duties under this chapter; and
  - c. In any liquidation or rehabilitation proceedings involving a domestic insurer, be appointed as the liquidator or rehabilitator.
2. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance business in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture may not exceed five percent of the unpaid assessment per month, but no forfeiture may be less than one hundred dollars per month.
3. Any final action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within sixty days of the member's receipt of notice of the final action being appealed. Any final action or order of the commissioner is subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state which apply to the action or orders of the commissioner.
4. The liquidator, rehabilitator, or conservator of any impaired or insolvent insurer may notify any interested persons of the effect of this chapter.

**SECTION 8. AMENDMENT.** Section 26.1-38.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-09. Prevention of insolvencies.**

1. To aid in the detection and prevention of member insurer insolvencies or impairments, it is the duty of the commissioner:

- a. To notify the commissioners of all the other states, territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:
    - (1) Revokes its license;
    - (2) Suspends its license; or
    - (3) Makes any formal order that ~~such company~~the member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners, contract owners, certificate holders, or creditors.
    - (4) Such notice must be mailed to all commissioners within thirty days following the action taken or the date on which such action occurs.
  - b. To report to the board of directors when the commissioner has taken any of the actions set forth in subdivision a or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors must contain all significant details of the action taken or the report received from another commissioner.
  - c. To report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that such insurer may be an impaired or insolvent insurer.
  - d. To furnish to the board of directors the national association of insurance commissioners insurance ~~regulation~~regulatory information system ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein must be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.
2. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers ~~and companies of insurers or health maintenance organizations~~ seeking admission to transact insurance business in this state.
  3. The board of directors, upon majority vote, may make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any ~~company~~insurer or health maintenance organization seeking to do an insurance business in this state. Such reports and recommendations may not be considered public documents.
  4. The board of directors, upon majority vote, may notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

5. The board of directors, upon majority vote, may make recommendations to the commissioner for the detection and prevention of member insurer insolvencies.

**SECTION 9. AMENDMENT.** Section 26.1-38.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-10. Credits for assessments paid - Tax offsets.**

1. A member insurer may offset against its premium tax liability to this state an assessment described in section 26.1-38.1-06 to the extent of twenty percent of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its ~~premiums~~premium tax liability for the year it ceases doing business.
2. A member insurer that is exempt from taxes referenced in subsection 1 may recoup that member insurer's assessments by a surcharge on that member insurer's premiums in a sum reasonably calculated to recoup the assessments over a reasonable period of time, as approved by the commissioner. Amounts recouped may not be considered premiums for any other purpose, including the computation of gross premium tax, the medical loss ratio, or agent commission. If a member insurer collects excess surcharges, the insurer shall remit the excess amount to the association, and the excess amount must be applied to reduce future assessments in the appropriate account.
3. Any sums ~~which~~that are acquired by refund, pursuant to section 26.1-38.1-06, from the association by member insurers, and which have ~~theretofore~~ been offset against premium taxes as provided in subsection 1, must be paid by ~~such~~the member insurers to this state in such manner as the tax authorities may require. The association shall notify the commissioner that such refunds have been made.

**SECTION 10. AMENDMENT.** Section 26.1-38.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-11. Miscellaneous provisions.**

1. This chapter does not reduce the liability for unpaid assessments of the insured of an impaired or insolvent insurer operating under a plan with assessment liability.
2. Records must be kept of all meetings of the board of directors to discuss the activities of the association in carrying out its powers and duties under section 26.1-38.1-05. The records of the association with respect to an impaired or insolvent insurer may not be disclosed before the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, except upon the termination of the impairment or solvency of the member insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection limits the duty of the association to render a report of its activities under section 26.1-38.1-12.
3. For the purpose of carrying out its obligations under this chapter, the association must be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any

amounts to which the association is entitled as subrogee pursuant to subsections 12, 13, and 14 of section 26.1-38.1-05. Assets of the impaired or insolvent insurer attributable to covered policies must be used to continue as covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies or contracts, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies or contracts bear to the reserves that should have been established for all policies of insurance or health benefit plans written by the impaired or insolvent insurer.

4. As a creditor of the impaired or insolvent insurer as established in subsection 3 and consistent with chapter 26.1-06, the association and other similar associations are entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator, within one hundred twenty days of a final determination of insolvency of ana member insurer by the receivership court, does not apply to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, the association is entitled to apply to the receivership court for approval of its own proposal to disburse these assets.
5. Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, any contract owners, certificate holders, enrollees, and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In making such a determination, consideration must be given to the welfare of the policy owners, contract owners, certificate holders, and enrollees of the continuing or successor member insurer.
6. No distribution to stockholders, if any, of an impaired or insolvent insurer may be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under section 26.1-38.1-05 with respect to sue the member insurer have been fully recovered by the association.
7.
  - a. If an order for liquidation or rehabilitation of ana member insurer domiciled in this state has been entered, the receiver appointed under the order has the right to recover on behalf of the member insurer, from any affiliate that controlled its capital stock, the amount of distributions, other than stock dividends paid by the member insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions b, c, and d.
  - b. No such distribution is recoverable if the member insurer shows that when paid the distribution was lawful and reasonable, and that the member insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the member insurer to fulfill its contractual obligations.
  - c. Any person who was an affiliate that controlled the member insurer at the time the distributions were paid is liable up to the amount of distributions

the person received. Any person who was an affiliate that controlled the member insurer at the time the distributions were declared is liable up to the amount of distributions the person would have received if payment had been made immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

- d. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.
- e. If any person liable under subdivision c is insolvent, all its affiliates that controlled it at the time the distribution was paid, are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

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

**26.1-38.1-13. Tax exemptions.**

The association is exempt from payment of all fees and all taxes levied by this state ~~on~~ any of its subdivisions, except taxes levied on real property.

**SECTION 12. AMENDMENT.** Section 26.1-38.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-14. Immunity.**

There is no liability on the part of and no cause of action of any nature may arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or the commissioner's representatives, for any action or omission by them in the performance of their powers and duties under this chapter. ~~Such~~This immunity extends to the participation of any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

**SECTION 13. AMENDMENT.** Section 26.1-38.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-16. Prohibited advertisement of Insurance Guaranty Association Act in insurance sales - Notice to policy owners.**

1. No person, including ~~an~~ a member insurer, insurance producer, or affiliate of ~~an~~ a member 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 or other coverage covered by chapter 26.1-38.1. ~~Provided, however, that~~However, 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 or coverage by a health maintenance organization.

2. Before January 1, 1990, the association shall prepare a summary document describing the general purposes and current limitations of the chapter and complying with subsection 3. This document should be submitted to the commissioner for approval. Sixty days after receiving approval, no member insurer may deliver a policy or contract to a policy owner, contract owner, certificate holder, or enrollee unless the summary document is delivered to the policy owner, contract owner or, certificate holder, or enrollee at the time of delivery of the policy or contract. The document should also be available upon request by a policy owner, contract owner, certificate holder, or enrollee. The distribution, delivery, or contents or interpretation of this document does not mean that either the policy or contract or the policy owner thereof would be, contract owner, certificate holder, or enrollee is covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to the chapter may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, enrollee, or insured any greater rights than those stated in this chapter.
3. The document prepared under subsection 2 must contain a clear and conspicuous disclaimer on its face. The commissioner shall establish the form and content of the disclaimer. The disclaimer must:
  - a. State the name and address of the life and health insurance guaranty association and insurance department;
  - b. Prominently warn the policy owner or, contract owner, certificate holder, or enrollee that the North Dakota life and health insurance guaranty association may not cover the policy or contract, or, if coverage is available, it will be subject to substantial limitations and exclusions and be conditioned on continued residence in this state;
  - c. State the types of policies or contracts for which guaranty funds will provide coverage;
  - d. State that the member insurer and its insurance producers are prohibited by law from using the existence of the North Dakota life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance or health maintenance organization coverage;
  - e. Emphasize that the policy owner or, contract owner, certificate holder, or enrollee should not rely on coverage under the North Dakota life and health insurance guaranty association when selecting an insurer or health maintenance organization coverage;
  - f. Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter; and
  - g. Provide other information as directed by the commissioner, including sources for information about the financial condition of insurers provided the information is not proprietary and is subject to disclosure under the state's public records law.
4. A member insurer shall retain evidence of compliance with subsection 2 for so long as the policy or contract for which the notice is given remains in effect.

**SECTION 14. REPEAL.** Section 26.1-38.1-17 of the North Dakota Century Code is repealed.

**SECTION 15. APPLICATION.** This Act applies to an insolvent insurer that is placed under an order of liquidation with a finding of insolvency after July 31, 2019.

Approved March 8, 2019

Filed March 8, 2019



## CHAPTER 245

### HOUSE BILL NO. 1123

(Representatives Schobinger, Kasper, Lefor, Mitskog)  
(Senators Klein, Krebsbach, Mathern)

AN ACT to create and enact a new section to chapter 26.1-39 of the North Dakota Century Code, relating to property and casualty insurance risk rating; and to provide for application.

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

**SECTION 1.** A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

##### **Fire protection class - Dispute.**

1. This section applies to an insurance policy issued or renewed to insure real property in this state.
2. Within thirty days following quoting, issuing, or renewing of the policy, the insured may assert a fire protection class which differs from the class identified by the insurer and the insurer shall implement this class. The insured shall present to the insurer a credible basis for the assertion supported by factual information.
3. Within ninety days following receipt of the assertion by an insured, the insurer may investigate the assertion and:
  - a. Change the fire protection class, effective from the date of issuance or renewal; or
  - b. Document the basis for the original class and implement the original class effective from the date of issuance or renewal.
4. After making a determination under subsection 3, the insurer shall inform the insured of the determination.

**SECTION 2. APPLICATION.** This Act applies to quoting, issuing, or renewing of insurance policies on and after the effective date of this Act.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 246

### HOUSE BILL NO. 1140

(Representatives Keiser, Lefor)  
(Senator Klein)

AN ACT to amend and reenact subsections 3 and 4 of section 26.1-39-11 and subsections 4 and 5 of section 26.1-40-01 of the North Dakota Century Code, relating to the renewal of an insurance policy with altered terms.

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

**SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 26.1-39-11 of the North Dakota Century Code are amended and reenacted as follows:

3. "Renewal" or "to renew" means the issuance and delivery by an insurer at the end of a policy period of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of an existing policy beyond its policy period or term. The term includes a change or alteration in the amount of a deductible, coverage, or exclusion which results in substantially equivalent coverage if the altered terms are provided to the insured in the notice of renewal.
4. "Termination" means cancellation or nonrenewal of property insurance coverage in whole or in part. Cancellation occurs during the policy term. 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 policy between companies within the same insurance holding company system is not a termination. ~~Requiring a reasonable deductible, reasonable changes in the amount of insurance, or reasonable reductions in policy limits of coverage is not considered a termination if the requirements are directly related to the hazard involved and are made on the~~A renewal date for the policy with altered terms as provided in subsection 3 is not a termination.

**SECTION 2. AMENDMENT.** Subsections 4 and 5 of section 26.1-40-01 of the North Dakota Century Code are amended and reenacted as follows:

4. "Renewal" or "to renew" means:
  - a. ~~The~~ the issuance and delivery by an insurer of a policy replacing, at the end of the previous policy period, a policy previously issued and delivered by the same insurer;
  - b. ~~The~~ the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; or
  - e. ~~The~~ the extension of the term of a policy beyond its policy period or term pursuant to a provision for extending the policy by payment of a continuation premium. The term includes a change or alteration in the amount of a deductible, coverage, or exclusion which results in substantially equivalent coverage if the altered terms are provided to the insured in the notice of renewal. Any policy with a policy period or term of less than six

months must be considered as if written for a policy period or term of six months except in case of termination under any of the circumstances specified in subsection 2 of section 26.1-40-05. Any policy written for a term longer than one year or any policy with no fixed expiration date must be considered as if written for successive policy periods or terms of one year and any termination by an insurer effective on an anniversary date of the policy is deemed a failure to renew.

5. "Termination" means cancellation or nonrenewal of automobile insurance coverage in whole or in part. Cancellation occurs during the policy term. 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. A renewal with altered terms as provided in subsection 4 is not a termination.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 247

### HOUSE BILL NO. 1156

(Representatives Howe, Dockter, K. Koppelman, Schauer)  
(Senator Wanzek)

AN ACT to create and enact sections 26.1-39-27 and 26.1-39-28 of the North Dakota Century Code, relating to the inception and termination times of specific insurance and rulemaking authority of the insurance commissioner; and to declare an emergency.

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

**SECTION 1.** Section 26.1-39-27 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-39-27. Travel, event, and unmanned aircraft insurance.**

1. As used in this section:
  - a. "Event cancellation coverage" means insurance covering the cancellation of an organized event, either public or private, described in the policy, which occurs on a specified date and time.
  - b. "Unmanned aircraft" means an aircraft operated without the possibility of direct human intervention from within or on the aircraft.
2. Unless otherwise provided under this title, the following insurance coverages are the only coverages that may cover an insured for a period of time other than beginning at 12:01 a.m. on the day on which coverage begins and ending at 12:01 a.m. on the day of expiration of the policy, as required by section 26.1-30-18:
  - a. Travel insurance;
  - b. Event cancellation coverage insurance; and
  - c. Unmanned aircraft liability insurance.
3. Any insurance policy covering insureds for a period of time other than beginning at 12:01 a.m. on the day on which coverage begins and ending at 12:01 a.m. on the day of expiration of the policy is subject to the provisions of sections 26.1-30-19, 26.1-30-20, and 26.1-30-21.

**SECTION 2.** Section 26.1-39-28 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-39-28. Rulemaking.**

The commissioner may adopt rules for the implementation and administration of this chapter.

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

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 248

### HOUSE BILL NO. 1075

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-44-02, 26.1-44-03.1, 26.1-44-03.2, 26.1-44-06, 26.1-44-06.1, and 26.1-44-08 of the North Dakota Century Code, relating to surplus lines insurance; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 26.1-44-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-02. Duty to file evidence of insurance and affidavit signed statement.**

1. Each surplus lines producer, ~~within sixty days~~ after the placing of any surplus lines insurance ~~whereif~~ the insured's home state is this state, shall execute and file a ~~written~~ report of placement, ~~no later than March first for the quarter ending the preceding December thirty-first, June first for the quarter ending the preceding March thirty-first, September first for the quarter ending the preceding June thirtieth, and December first for the quarter ending the preceding September thirtieth of each year,~~ regarding the insurance which must be kept confidential by the commissioner. The report of placement must include:
  - 1- a. The name and address of the insured;
  - 2- b. The identity of the insurer or insurers;
  - 3- ~~A description of the subject and location of the risk;~~
  - 4- c. The amount of premium charged for the insurance;
  - 5- d. ~~A~~ The amount of premium tax allocation spreadsheet detailing the portion of premium attributable to properties, risks, or exposures located in each state;
  - 6- e. Any other pertinent information as the commissioner may reasonably require; and
  - 7- f. ~~An affidavit on a~~ A signed statement certifying under penalty of law in the form prescribed by the commissioner as to the diligent efforts to place the coverage with admitted insurers and the results of that effort. The affidavit signed diligent search statement must be open to public inspection. The affidavit signed diligent search statement must affirm that the insured was expressly advised in writing prior to before placement of the insurance that:

- a. (1) The surplus lines insurer with ~~whom~~which the insurance was to be placed is not licensed in this state and is not subject to the state's supervision; and
  - b. (2) In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.
2. A surplus lines producer seeking to place nonadmitted insurance for an exempt commercial purchaser is not required to make a due diligence search or to file the ~~affidavit~~signed diligent search statement in ~~subdivision f of~~ subsection ~~7~~1 if the surplus lines producer has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight and the exempt commercial purchaser has subsequently requested in writing the surplus lines producer to procure or place such insurance from a nonadmitted insurer.

**SECTION 2. AMENDMENT.** Section 26.1-44-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-03.1. Surplus lines tax.**

1. If the insured's home state is this state, ~~in addition to the full amount of gross premiums charged by the insurer for the insurance on properties, risks, or exposures located or to be performed in this state or another state,~~ every surplus lines producer shall ~~collect and pay to the commissioner a sum equal to one and three-fourths percent of the gross premiums charged, assessments, membership fees, subscriber fees, policy fees, and service fees, less any return premiums, for surplus lines insurance provided by the surplus lines producer.~~
2. The tax on any portion of the premium unearned at termination of insurance having been credited or refunded by the state to the surplus lines producer must be returned to the policyholder directly by the surplus lines producer. The surplus lines producer is prohibited from rebating, for any reason, any part of the tax.
3. At the time of filing the annual tax statement as set forth in section 26.1-44-06.1, each surplus lines producer shall pay the premium tax due for the policies written during the period covered by the annual tax statement.

**SECTION 3. AMENDMENT.** Section 26.1-44-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-03.2. Domestic surplus lines insurers.**

1. A North Dakota domestic insurer may be designated a domestic surplus lines insurer if:
  - a. The insurer possesses a policyholder surplus of at least fifteen million dollars;
  - b. The designation is in compliance with a resolution of the insurer's board of directors; and
  - c. The commissioner has provided written approval of the designation.

2. A domestic surplus lines insurer may write surplus lines insurance in North Dakota and any other jurisdiction in which the insurer is eligible. A domestic surplus lines insurer may insure in this state any risk if:
  - a. Produced pursuant to chapter 26.1-44; and
  - b. The premium is subject to surplus lines premium tax pursuant to section 26.1-44-03.1; and
  - c. ~~Issued pursuant to the surplus lines insurance multistate compliance compact.~~
3. For purposes of the federal Nonadmitted and Reinsurance Reform Act of 2010 [15 U.S.C. 8201 et seq.], a domestic surplus lines insurer is considered a nonadmitted insurer as defined under that Act, with respect to risks insured in this state.
4. A domestic surplus lines insurer may not issue a policy designed to satisfy the motor vehicle financial responsibility requirements in chapter 26.1-41 or any other law mandating insurance coverage by a licensed insurance company.
5. Except as specifically exempted from such requirements, a domestic surplus lines insurer is subject to compliance with all financial examination and solvency requirements that apply to domestic insurers under chapter 26.1-03 regarding examinations and reports.
6. A domestic surplus lines insurer is not subject to the provisions of chapter 26.1-38.1 regarding the life and health insurance guaranty association nor to chapter 26.1-39 regarding property and casualty insurance.

**SECTION 4. AMENDMENT.** Section 26.1-44-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-06. Records of surplus lines producer.**

1. If the insured's home state is this state, each surplus lines producer shall keep in this state a full and true record of each surplus lines insurance contract placed by or through the producer, including a copy of the policy, certificate, cover note, or other evidence of insurance showing each of the following applicable items:
  1. a. Amount of the insurance, risks, and perils insured;
  2. b. Brief description of the property insured and its location;
  3. c. Gross premium charged;
  4. d. Any return premium paid;
  5. e. Rate of premium charged upon the several items of property;
  6. f. Effective date and terms of the contract;
  7. g. Name and address of the insured;
  8. h. Name and address of the insurer;



9. i. Amount of tax and other sums to be collected from the insured;
10. ~~Allocation of taxes by state;~~
11. j. Identity of the producer of record;
12. k. Any confirming correspondence from the insurer or its representative; and
13. l. The application.
2. The surplus lines producer shall keep open the record of each contract at all reasonable times to examination by the commissioner without notice for a period not less than five years following termination of the contract. In lieu of maintaining offices in this state, each nonresident surplus lines producer shall make available to the commissioner any and all records that the commissioner deems necessary for examination.

**SECTION 5. AMENDMENT.** Section 26.1-44-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-06.1. Reports and policy changes.**

1. If the insured's home state is this state, ~~before~~ no later than March ~~second~~ first of each year, each surplus lines producer shall file with the commissioner on forms prescribed by the commissioner an annual tax statement of all surplus lines insurance transacted during the preceding calendar year, including:
- a. Aggregate gross premiums written;
  - b. Aggregate return premiums; and
  - c. Amount of aggregate tax remitted ~~on risks located or to be performed in this state; and~~
  - d. ~~Amount of aggregate tax remitted on risks located or to be performed in another state.~~
2. An annual tax statement is not required to be filed ~~when~~ if a surplus lines producer has transacted no surplus lines insurance during the preceding calendar year.
3. a. ~~If the insured's home state is this state, each surplus lines producer shall file with the commissioner in the manner prescribed by the commissioner any surplus lines insurance endorsement, audit, or cancellation as follows:~~
- (1) After any change to the initial surplus lines insurance placement which changes the insurance premium amount; or
  - (2) After the producer obtains knowledge of any change to the initial surplus lines insurance placement which changes the insurance premium amount and the producer is able to provide written proof to the commissioner of the date the producer obtained knowledge of the change.
- b. Any endorsement, audit, or cancellation subject to subdivision a must be filed no later than March first for the calendar quarter ending the preceding

December thirty-first, June first for the calendar quarter ending the preceding March thirty-first, September first for the calendar quarter ending the preceding June thirtieth, or December first for the calendar quarter ending the preceding September thirtieth of each year.

**SECTION 6. 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 report of placement and affidavit signed statement, endorsement, audit, cancellation, file annual tax statement, and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review.**

1. A surplus lines producer is liable for a fine ~~of up to~~ twenty-five dollars for each day of delinquency, not to exceed the sum of five hundred dollars for each failure or refusal to file, if the producer:
  - a. ~~Fails or refuses to file the report of placement or affidavit within sixty days signed diligent search statement as required under section 26.1-44-02;~~
  - b. ~~Fails or refuses to file the endorsement, audit, or cancellation within sixty days after any change to the initial placement which changes the insurance premium amount, except a surplus lines producer that is able to provide written proof of the date the producer obtained knowledge of the change to the initial placement which changes the insurance premium amount has sixty days from the date the producer obtained knowledge of this change as required under section 26.1-44-06.1; or~~
  - c. ~~Fails or refuses to make and file the annual tax statement or pay the tax no later than March first as required under section 26.1-44-06.1; or~~
  - d. ~~Fails or refuses to pay the taxes required to be paid before the second day of March after such tax is due.~~
2. The tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing the commissioner, in any court of competent jurisdiction, and the fine, when so collected, must be paid to the state treasurer and placed to the credit of the general fund. The commissioner, if satisfied that the delay in filing the annual tax statement, report of placement, endorsement, audit cancellation, or ~~affidavit and signed diligent search statement or~~ the payment of the tax was excusable, may waive all or any part of the fine. The commissioner may revoke or suspend the surplus lines producer's license if any surplus lines producer fails to make and file the annual tax statement and pay the taxes, or refuses to allow the commissioner to inspect and examine the producer's records of the business transacted by the producer pursuant to this chapter, or fails to keep the records in the manner required by the commissioner, or falsifies or provides false information in the affidavit signed diligent search statement referred to in section 26.1-44-02.
3. If the license of a surplus lines producer is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines producer until two years have elapsed from the effective date of the revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 249

### SENATE BILL NO. 2102

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact chapter 26.1-53.1 of the North Dakota Century Code, relating to discount plans; and to repeal chapter 26.1-53 of the North Dakota Century Code, relating to discount medical plans.

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

**SECTION 1.** Chapter 26.1-53.1 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-53.1-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
2. "Ancillary services" includes audiology, dental, vision, mental health, substance abuse, chiropractic, and podiatry services.
3. "Control", "controlled by", or "under control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 26.1-10-04, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
4. "Direct primary care" means any private contract between a provider and consumer for services associated with that provider.
5. "Discount plan" means a business arrangement or contract in which a person, in exchange for fees, dues, charges, or other consideration, offers members the access to providers of medical or ancillary services and the right to receive discounts on medical or ancillary services provided under the discount plan from those providers. The term includes a discount prescription drug plan. The term does not include:

- a. A plan that does not charge a membership, payment, dues, other consideration, or other fee to use the discount plan;
  - b. Any product otherwise regulated under title 26.1;
  - c. Direct primary care;
  - d. A patient access program; or
  - e. A Medicare prescription drug plan.
6. "Discount plan organization" means an entity that, in exchange for fees, dues, charges, or other consideration, provides access for discount plan members to providers of medical or ancillary services and the right to receive medical or specialty services from those providers at a discount. It is the organization that contracts with providers, provider networks, or other discount plan organizations to offer access to medical or specialty services at a discount and determines the charge to discount plan members.
7. "Discount prescription drug plan" means a business arrangement or contract in which a person, in exchange for fees, dues, charges, or other consideration, provides members the access to providers of pharmacy services and the right to receive discounts on pharmacy services provided under the discount prescription drug plan from those providers.
8. "Facility" means an institution providing medical or ancillary services or a health care setting. The term includes:
- a. A hospital or other licensed inpatient center;
  - b. An ambulatory surgical or treatment center;
  - c. A skilled nursing center;
  - d. A residential treatment center;
  - e. A rehabilitation center; and
  - f. A diagnostic, laboratory, or imaging center.
9. "Health care professional" means a physician, pharmacist, or other health care practitioner who is licensed, accredited, or certified to perform specified medical or ancillary services within the scope of the professional's license, accreditation, certification, or other appropriate authority consistent with state law.
10. "Health insurer" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or medical or ancillary services.

11. "Marketer" means a person that markets, promotes, sells, or distributes a discount plan, including a private label entity that places the entity's name on and markets or distributes a discount plan pursuant to a marketing agreement with a discount plan organization.
12. "Medical services" means any maintenance care of, or preventive care for, the human body, or care, service, or treatment of an illness or dysfunction of, or injury to, the human body. The term includes physician care, inpatient care, hospital surgical services, emergency services, ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric services, laboratory services, medical equipment and supplies, pharmacy services, and ancillary services.
13. "Medicare prescription drug plan" means a plan that provides Medicare part D prescription drug benefits in accordance with the requirements of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173].
14. "Member" means any individual who pays fees, dues, charges, or other consideration for the right to receive the benefits of a discount plan or discount prescription drug plan.
15. "Patient access program" means a voluntary program sponsored by a pharmaceutical manufacturer, or a consortium of pharmaceutical manufacturers, which provide free or discounted health care products directly to low-income or uninsured individuals either through a discount card or direct shipment.
16. "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.
17. "Pharmacy services" includes pharmaceutical supplies and prescription drugs.
18. "Provider" means any health care professional or facility that has contracted, directly or indirectly, with a discount plan organization to provide medical or ancillary services to members.
19. "Provider network" means an entity that negotiates, directly or indirectly, with a discount plan organization on behalf of more than one provider to provide medical or ancillary services to members.

#### **26.1-53.1-02. Application.**

1. This chapter applies to all discount plan organizations conducting business in this state.
2. A discount plan organization that is a health insurer licensed pursuant to title 26.1:
  - a. Is not required to be registered as a discount plan organization. However, any of the organization's affiliates that operate as a discount plan organization in this state shall comply with all provisions of this chapter and must be registered as a discount plan organization.
  - b. Is required to comply with sections 26.1-53.1-14 through 26.1-53.1-21.

**26.1-53.1-03. Registration requirements for a discount plan organization - Fees.**

1. Before doing business in or from this state as a discount plan organization, a discount plan organization:
  - a. Must be authorized to transact business in this state through the secretary of state; and
  - b. Must be registered by the commissioner to operate as a discount plan organization.
2. An application for registration under this chapter must be filed with the commissioner on a form prescribed by the commissioner.
3. The application must demonstrate, set forth, or be accompanied by the following:
  - a. The five hundred dollar application fee;
  - b. A list of the names, addresses, official positions, and biographical information of each individual responsible for conducting the applicant's affairs, including each:
    - (1) Member of the board of directors, board of trustees, executive committee, or other governing board or committee; and
    - (2) Officer;
  - c. A copy of the form of any contract made or arrangement to be made between the applicant and any individual listed in subdivision b;
  - d. All marketing materials to be used in connection with marketing a discount plan in this state;
  - e. A description of member complaint procedures to be established and maintained by the applicant;
  - f. A copy of the applicant's cancellation and refund policy;
  - g. The name and address of the applicant's agent for service of process, notice, or demand, or if not domiciled in this state, a duly executed instrument appointing the commissioner and the commissioner's successors, the applicant's attorney upon whom all process in any action or proceeding against the applicant may be served; and
  - h. Any other information the commissioner may reasonably require.
4. The department may request a copy of the form of all contracts to be made or sold in this state or to be made between the applicant and any providers or provider networks regarding provision of medical or ancillary services to members.
5. The department may request a copy of the form of any contract between the applicant and any person or other entity for the performance on the applicant's behalf of any function, including marketing, administration, enrollment,

- investment management, and contracting for the provision of medical or ancillary services to cardholders.
6. After the receipt of an application filed pursuant to this section, the commissioner shall review the application and notify the applicant of any deficiencies in the application.
  7. After receipt of a completed application, the commissioner shall:
    - a. Register the applicant as a discount plan if the commissioner is satisfied the applicant has met the following:
      - (1) The requirements of this section; and
      - (2) The ownership, control, and management of the applicant are competent and trustworthy and possess managerial experience that would make the proposed operation of the discount plan organization beneficial to discount plan members; or
    - b. Deny the registration application and state the grounds for denial.
  8. Registration is effective for one year, unless before expiration the registration is renewed in accordance with this subsection or suspended or revoked in accordance with section 26.1-53.1-12.
  9. Not later than March first of each year, the discount plan organization shall submit:
    - a. Updated information to anything provided pursuant to subsections 3, 4, and 5 and section 26.1-53.1-23; and
    - b. The renewal fee of two hundred fifty dollars.
  10. The commissioner shall renew the registration of each discount plan organization that meets the requirements of this chapter and pays the appropriate renewal fee.

**26.1-53.1-04. Exception to registration for providers giving discounts to own patients.**

A provider that provides discounts to the provider's own patients, without any cost or fee of any kind to the patient, is not required to obtain and maintain registration under this chapter as a discount plan organization.

**26.1-53.1-05. Surety bond.**

Each registered discount plan organization shall maintain in force a surety bond in the organization's own name in an amount not less than thirty-five thousand dollars to be used in the discretion of the commissioner to protect the financial interest of members. The bond must be issued by an insurance company licensed to do business in this state. Initially, a copy of the bond or a statement identifying the depository, trustee, and account number of the surety account, and for renewal proof of annual renewal of the bond or maintenance of the surety account, must be filed with the commissioner.



**26.1-53.1-06. Surety bonds not subject to levy by claimants.**

Except for the commissioner, the assets or securities held in this state as a deposit pursuant to section 26.1-53.1-05 are not subject to levy by a judgment creditor or other claimant of the discount plan organization.

**26.1-53.1-07. Internet website to be established.**

Before registration by the commissioner, each discount plan organization shall establish an internet website. The internet website must have an up-to-date list of names and addresses of the providers with which the organization has contracted directly or through a provider network. The internet website address must be displayed prominently on all of the discount plan organization's advertisements, marketing materials, brochures, and discount plan cards.

**26.1-53.1-08. Investigation by commissioner.**

Within a reasonable time after receipt of a properly completed application for registration under this chapter, the commissioner may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter the commissioner believes necessary or advisable to determine compliance with this chapter or for the protection of the public.

**26.1-53.1-09. Reporting of actions.**

A discount plan organization shall report to the commissioner any administrative action taken against the organization 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.

**26.1-53.1-10. Nonrenewal, suspension, or revocation.**

The commissioner may suspend the authority of a discount plan organization to enroll new members or refuse to renew, suspend, or revoke a discount plan organization's registration if, after notice to the registrant and hearing, the commissioner finds that any of the following conditions exist:

1. The discount plan organization is not operating in compliance with this chapter;
2. The discount plan organization has advertised, merchandised, or attempted to merchandise the organization's services in such a manner as to misrepresent the organization's services or capacity for service or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising;
3. The discount plan organization is not fulfilling the organization's obligations as a discount plan organization; or
4. The continued operation of the discount plan organization would be hazardous to the organization's members.

**26.1-53.1-11. Winding up of affairs.**

If the registration of a discount plan organization is surrendered, revoked, or not renewed, the discount plan organization shall proceed, immediately following

surrender, or the effective date of the order of revocation or, in the case of a nonrenewal, the date of expiration of the registration, to wind up the organization's affairs transacted under the registration. The discount plan organization may not engage in any further advertising, solicitation, collecting of fees, or renewal of contracts.

#### **26.1-53.1-12. Duration of suspension - Conditions for reinstatement.**

The commissioner shall, in the commissioner's order suspending the authority of the discount plan organization to enroll new members, specify the period during which the suspension is to be in effect and the conditions, if any, that must be met by the discount plan organization before reinstatement of the organization's registration to enroll members. The commissioner may rescind or modify the order of suspension before the expiration of the suspension period. Registration of a discount plan organization may not be reinstated unless requested by the discount plan organization. The commissioner may not grant the request for reinstatement if the commissioner finds the circumstances for which the suspension occurred still exist or are likely to continue.

#### **26.1-53.1-13. Examination or investigation of discount plan organization - Expenses.**

The commissioner may examine or investigate the business and affairs of any discount plan organization to protect the interests of the residents of this state for any potential violations of this chapter or as the commissioner deemed necessary. The discount plan organization shall produce any requested information and documentation within twenty days of such request. The discount plan organization that is the subject of the examination or investigation shall pay the expenses incurred in conducting the examination or investigation. Failure by the discount plan organization to pay the expenses is grounds for denial of registration or revocation of registration to operate as a discount plan organization. The discount plan organization is subject to the provisions of section 26.1-04-03 and nothing in this chapter may be construed to discharge any requirements imposed by section 26.1-04-03.

#### **26.1-53.1-14. Charges and fees - Refund requirements.**

1. A discount plan organization may charge a periodic charge as well as a reasonable one-time processing fee for a discount plan.
2. If a member cancels the member's membership in the discount plan organization within the first thirty days after the date of receipt of the signed consumer contract or agreement, the member shall receive a reimbursement of all periodic charges.
3. If the discount plan organization cancels a membership for any reason other than nonpayment of charges by the member, the discount plan organization shall make a pro rata reimbursement of all periodic charges to the member.

#### **26.1-53.1-15. Bundled products.**

1. If a discount plan is bundled with other products, the bundled product must clearly identify the discount plan component separately from each other component.
2. A discount plan organization that is a health insurer licensed pursuant to title 26.1 which provides a discount plan product that is incidental to the insured product is not subject to this section.

3. If a discount plan is bundled with an insurance product, the discount plan organization or marketer selling such product must be licensed pursuant to chapter 26.1-26.

#### **26.1-53.1-16. Provider agreements.**

1. A discount plan organization must have a written provider agreement with all providers offering medical or ancillary services to the organization's members. The written provider agreement may be entered directly with the provider or indirectly with a provider network to which the provider belongs.
2. A provider agreement between a discount plan organization and a provider must provide the following:
  - a. A list of the medical or ancillary services and products to be provided at a discount;
  - b. The amount or amounts of the discounts or, alternatively, a fee schedule that reflects the provider's discounted rates; and
  - c. That the provider will not charge members more than the discounted rates.
3. A provider agreement between a discount plan organization and a provider network must require that the provider network have written agreements with the provider network's providers which:
  - a. Contain the provisions described in subsection 2;
  - b. Authorize the provider network to contract with the discount plan organization on behalf of the provider; and
  - c. Require the provider network to maintain an up-to-date list of the provider network's contracted providers and to provide the list on a monthly basis to the discount plan organization.
4. A provider agreement between a discount plan organization and an entity that contracts with a provider network must require that the entity, in the entity's contract with the provider network, require the provider network to have written agreements with the provider network's providers which comply with subsection 3.
5. The discount plan organization shall maintain a copy of each active provider agreement into which the organization has entered.

#### **26.1-53.1-17. Marketing requirements.**

1. A discount plan organization may market directly or contract with other marketers for the distribution of the organization's product.
2. The discount plan organization must have an executed written agreement with a marketer before the marketer's marketing, promoting, selling, or distributing the discount plan.
3. The agreement between the discount plan organization and the marketer must prohibit the marketer from using advertising, marketing materials, brochures,

and discount plan cards without the discount plan organization's approval in writing.

4. The discount plan organization must be bound by and responsible for the activities of a marketer which are within the scope of the marketer's agency relationship with the organization, or are otherwise approved by or under the direction and control of the organization.
5. Before use, a discount plan shall approve in writing any advertisements, marketing materials, brochures, and discount cards used by marketers to market, promote, sell, or distribute the discount plan.

#### **26.1-53.1-18. Advertisements to be truthful and not misleading.**

Any advertisements, marketing materials, brochures, discount plan cards, and any other communications of a discount plan organization provided to prospective members and members must be truthful and not misleading in fact or implication. An advertisement, marketing material, brochure, discount plan card, or other communication is misleading in fact or in implication if the communication has a capacity or tendency to mislead or deceive based on the overall impression the communication is reasonably expected to create within the segment of the public to which the communication is directed.

#### **26.1-53.1-19. Prohibited conduct.**

A discount plan organization may not:

1. Except as otherwise provided in this chapter, or as a disclaimer of any relationship between discount plan benefits and insurance, or as a description of an insurance product connected with a discount plan, use the term "insurance" in any advertisement, marketing material, brochure, or discount plan cards;
2. Use in any advertisements, marketing materials, brochures, or discount plan cards the terms "health plan", "coverage", "copay", "copayments", "deductible", "preexisting conditions", "guaranteed issue", "premium", "PPO", "preferred provider organization", or other terms in a manner that could reasonably mislead an individual into believing the discount plan is health insurance;
3. Use language in any advertisements, marketing materials, brochures, or discount plan cards with respect to being licensed or registered by the state insurance department in a manner that could reasonably mislead an individual into believing the discount plan is insurance or has been endorsed by the state;
4. Make misleading, deceptive, or fraudulent representations regarding the discount or range of discounts offered by the discount plan;
5. Have restrictions on access to discount plan providers, including, except for hospital services, waiting periods and notifications periods; or
6. Pay providers any fees for medical or ancillary services or collect or accept money from a member to pay a provider for medical or ancillary services provided, unless the discount plan organization has an active certificate of

authority to act as a third-party administrator in accordance with chapter 26.1-27.

**26.1-53.1-20. Required disclosures.**

1. A discount plan organization or marketer shall disclose clearly and conspicuously in writing to any prospective member and on any advertisements, marketing materials, or brochures relating to a discount plan:
  - a. The plan is a discount plan and is not insurance coverage;
  - b. The range of discounts for medical or ancillary services provided under the plan will vary depending on the type of provider and medical or ancillary service received;
  - c. Unless the discount plan organization has an active certificate of authority to act as a third-party administrator as described in subsection 6 of section 26.1-53.1-19, that the plan does not make payments to providers for the medical or ancillary services received under the discount plan;
  - d. The plan member is obligated to pay for all medical or ancillary services, but will receive a discount from those providers that have contracted with the discount plan organization; and
  - e. The toll-free telephone number and internet website address for the registered discount plan organization for prospective members and members to obtain additional information about and assistance on the discount plan and up-to-date lists of providers participating in the discount plan.
2. If the initial contact with a prospective member is by telephone, the disclosures required under subsection 1 must be made orally and be included in the initial written materials that describe the benefits under the discount plan provided to the prospective or new member.
3. In addition to the disclosures required under subsection 1, each discount plan organization or marketer shall provide to each prospective member, at the time of enrollment, information that describes the terms and conditions of the discount plan, including any limitations or restrictions on the refund of any processing fees or periodic charges associated with the discount plan.

**26.1-53.1-21. Written agreement with member.**

Each new member must be provided a written document that contains the terms and conditions of the discount plan that clearly provides:

1. The name of the member;
2. The benefits to be provided under the discount plan;
3. Any processing fees and periodic charges associated with the discount plan, including any limitations or restrictions on the refund of any processing fees and periodic charges;
4. The mode of payment of any processing fees and periodic charges, such as monthly or quarterly, and procedures for changing the mode of payment;

5. Any limitations, exclusions, or exceptions regarding the receipt of discount plan benefits;
6. Any waiting periods for certain medical or ancillary services under the discount plan;
7. Procedures for obtaining discounts under the discount plan, such as requiring members to contact the discount plan organization to make an appointment with a provider on the member's behalf;
8. Cancellation procedures, including information on the member's thirty-day cancellation rights and refund requirements and procedures for obtaining refunds;
9. Renewal, termination, and cancellation terms and conditions;
10. Procedures for adding new members to a family discount plan, if applicable;
11. Procedures for filing complaints under the discount plan organization's complaint system and information that, if the member remains dissatisfied after completing the organization's complaint system, the plan member may contact the plan member's state insurance department; and
12. The name and mailing address of the registered discount plan organization where the member can make inquiries about the plan, send cancellation notices, and file complaints.

#### **26.1-53.1-22. Notice of change in name or address.**

Each discount plan organization shall provide the commissioner at least thirty days' advance notice of any change in the discount plan organization's name, principal business address, mailing address, or internet website address.

#### **26.1-53.1-23. Annual reports.**

1. A discount plan organization shall file an annual report with the commissioner in the form prescribed by the commissioner no later than March first.
2. The report must include:
  - a. If different from the initial application for registration or at the time of renewal of registration or the last annual report, as appropriate, a list of the names and residence addresses of all persons responsible for the conduct of the organization's affairs, together with a disclosure of the extent and nature of any contracts or arrangements with these persons and the discount plan organization, including any possible conflict of interest;
  - b. The number of discount plan members in the state; and
  - c. Any other information relating to the performance of the discount plan organization which the commissioner may require.
3. Any discount plan organization that fails to file an annual report in the form and within the time required by this section:
  - a. Accrues monetary penalties of:

- (1) Up to five hundred dollars each day for the first ten days during which the violation continues; and
  - (2) Up to one thousand dollars each day after the first ten days during which the violation continues; and
- b. Upon notice by the commissioner, lose the organization's authority to enroll new members or do business in this state while the violation continues.

**26.1-53.1-24. Civil penalties for violation of chapter.**

In addition to or in lieu of any applicable denial, suspension, or revocation of registration, any person violating this chapter may, after hearing, be subject to a civil fine not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state.

**26.1-53.1-25. Designation of compliance officer.**

Each discount plan organization shall designate and provide the commissioner with the name, address, and telephone number of the discount plan organization's compliance officer responsible for ensuring compliance with this chapter.

**26.1-53.1-26. Record filing and retention requirements.**

1. Upon demand by the commissioner, a discount plan organization shall file with the commissioner a list of prospective member fees and charges associated with the discount plan.
2. A copy of every form to be used by a discount plan organization, including the form for the written document demonstrating membership in the plan and all advertising, marketing materials, and brochures, must be retained by such organization and available for inspection by the commissioner for at least five years from the date on which the form was last used.

**26.1-53.1-27. Rulemaking.**

The commissioner may adopt rules for the implementation and administration of this chapter.

**26.1-53.1-28. Application to existing discount plan organizations.**

A person doing business in this state as a discount plan organization on or before the effective date of this chapter has six months following the effective date of this Act to come into compliance with the requirements of this chapter.

**SECTION 2. REPEAL.** Chapter 26.1-53 of the North Dakota Century Code is repealed.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 250

### HOUSE BILL NO. 1181

(Representative Keiser)  
(Senator Klein)

AN ACT to create and enact chapter 26.1-57 of the North Dakota Century Code, relating to the regulation of guaranteed asset protection waivers; to provide a penalty; and to provide for application.

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

**SECTION 1.** Chapter 26.1-57 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-57-01. Definitions.**

As used in this chapter:

1. "Administrator" means a person, other than an insurer or creditor, which performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.
2. "Borrower" means a debtor, retail buyer, or lessee, under a finance agreement.
3. "Creditor" means the lender in a loan or credit transaction; the lessor in a lease transaction; a dealer that provides credit to a motor vehicle retail buyer; the seller in a commercial retail installment transaction; or an assignee of any of the these persons.
4. "Dealer" has the same meaning as provided under section 39-01-01.
5. "Finance agreement" means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.
6. "Free-look period" means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. This period of time may not be shorter than thirty days.
7. "Guaranteed asset protection waiver" means a contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement if there is a total physical damage loss or unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement.
8. "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.



9. "Motor vehicle" has the same meaning as provided under section 39-01-01, except the term includes a snowmobile and a trailer for a snowmobile, motorcycle, boat, camper, or personal watercraft.

**26.1-57-02. Scope.**

1. This chapter does not apply to:
  - a. An insurance policy offered by an insurer under the insurance laws of this state;
  - b. A debt cancellation or debt suspension contract offered in compliance with title 12, Code of Federal Regulations, part 37 or title 12, Code of Federal Regulations, part 721, or other federal law; or
  - c. A debt cancellation or debt suspension contract offered by a bank or credit union chartered under the laws of this state.
2. Guaranteed asset protection waivers are not insurance and, except as provided under this chapter, are exempt from the insurance laws of this state. A person marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers which complies with this chapter is exempt from the insurance requirements of this state.

**26.1-57-03. Requirements for offering guaranteed asset protection waivers.**

1. A guaranteed asset protection waiver may be offered, sold, or provided to a borrower in this state in compliance with this chapter.
2. A guaranteed asset protection waiver may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.
3. Notwithstanding any contrary provision of law, any cost to the borrower for a guaranteed asset protection waiver entered in compliance with the federal Truth in Lending Act [15 U.S.C. 1601 et seq.], and related implementing regulations, must be separately stated and is not a finance charge or interest.
4. A dealer shall insure the dealer's guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a dealer, may insure the creditor's guaranteed asset protection waiver obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be obtained directly by a creditor or dealer, or may be procured by an administrator, to cover a creditor's or dealer's obligations. However, a dealer that is a lessor on a motor vehicle is not required to insure obligations related to guaranteed asset protection waivers on that leased vehicle.
5. The guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of that finance agreement by the creditor.
6. Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.

7. A creditor that offers a guaranteed asset protection waiver shall report the sale of, and forward funds received on all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.
8. Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, pursuant to the terms of a written agreement, must be held by the creditor or administrator in a fiduciary capacity.

#### **26.1-57-04. Contractual liability or other insurance policies.**

1. Contractual liability or other insurance policies insuring guaranteed asset protection waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.
2. Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver also must cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.
3. Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.
4. The cancellation or termination of a contractual liability or other insurance policy may not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor before the date of cancellation or termination and for which premium has been received by the insurer.

#### **26.1-57-05. Disclosures.**

A guaranteed asset protection waiver must disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

1. Neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset protection waiver.
2. The name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator if different from the creditor.
3. The purchase price and the terms of the guaranteed asset protection waiver, including the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver.
4. The borrower may cancel the guaranteed asset protection waiver within a free-look period as specified in the waiver, and is entitled to a full refund of the purchase price, if no benefits have been provided.
5. The procedure the borrower shall follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address at which the borrower may apply for waiver benefits.

6. The procedure for canceling the guaranteed asset protection waiver and for requesting any refund due.
7. To receive any refund due in the event of a borrower's cancellation of the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free-look period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator, or such other party. If the request to cancel is a result of the early termination of the finance agreement the borrower shall provide the written request to cancel within ninety days of the occurrence of the event terminating the finance agreement.
8. The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due, in the event of cancellation of the guaranteed asset protection waiver or early termination of the finance agreement.

#### **26.1-57-06. Cancellation.**

1. A guaranteed asset protection waiver agreement is cancellable. A guaranteed asset protection waiver must provide if a borrower cancels a waiver within the free-look period, the borrower is entitled to a full refund of the purchase price, if benefits have not been provided. If a borrower cancels the waiver after the free-look period and no benefits have been provided, the creditor, administrator, or other authorized party shall provide the borrower a refund of the purchase price, calculated in a manner at least as favorable as using the sum-of-the-digits method, less any cancellation fee no greater than fifty dollars.
2. To receive a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to cancel to the creditor, administrator, or other party. If the request to cancel is a result of the early termination of the finance agreement the borrower shall provide the written request to cancel within ninety days of the occurrence of the event terminating the finance agreement.
3. If the cancellation of a guaranteed asset protection waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subsection 4.
4. Any cancellation refund under subsection 1, 2, or 3 may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

#### **26.1-57-07. Commercial transactions exempted.**

Subsection 3 of section 26.1-57-03, section 26.1-57-05, and section 26.1-57-06, are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

**26.1-57-08. Enforcement - Penalty.**

1. The commissioner may take action as necessary or appropriate to enforce this chapter and to protect guaranteed asset protection waiver holders in this state.
2. After proper notice and opportunity for hearing, the commissioner may:
  - a. Order the creditor, administrator, or any other person not in compliance with this chapter to cease and desist from further guaranteed asset protection waiver-related operations that are in violation of this chapter.
  - b. Impose a penalty of not more than five hundred dollars per violation and no more than ten thousand dollars in the aggregate for all violations of a similar nature. For purposes of this chapter, violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, regardless of the number of times the conduct or practice determined to be a violation of the chapter occurred.
  - c. Order the creditor, administrator, or any other person not in compliance with this chapter to pay restitution of the guaranteed asset protection waiver purchase price.

**SECTION 2. APPLICATION.** This Act applies to all guaranteed asset protection waivers that become effective on or after the effective date of this Act.

Approved March 20, 2019

Filed March 21, 2019

# JUDICIAL BRANCH OF GOVERNMENT

## CHAPTER 251

### HOUSE BILL NO. 1068

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to repeal sections 27-04-01, 27-04-03, 27-04-04, 27-04-06, 27-04-07, and 27-04-08 of the North Dakota Century Code, relating to appointment of the supreme court reporter, the salary of the supreme court reporter, the location of the office of the supreme court reporter, duties of the supreme court reporter, and the sale and disposal of books and other library materials by the supreme court reporter.

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

**SECTION 1. REPEAL.** Sections 27-04-01, 27-04-03, 27-04-04, 27-04-06, 27-04-07, and 27-04-08 of the North Dakota Century Code are repealed.

Approved March 6, 2019

Filed March 6, 2019

## CHAPTER 252

### HOUSE BILL NO. 1516

(Representatives Longmuir, Brandenburg, M. Johnson, Klemin, K. Koppelman,  
Vigesaa)  
(Senators J. Lee, Vedaa, Wardner)

AN ACT to amend and reenact subsection 1 of section 27-05.2-03 of the North Dakota Century Code, relating to fees in civil cases.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 27-05.2-03 of the North Dakota Century Code is amended and reenacted as follows:

1. A clerk of the district court shall charge and collect the following fees in civil cases:
  - a. For filing a case for decision that is not a small claims action, eighty dollars.
    - (1) Fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which exceed ~~six~~seven hundred fifty thousand dollars in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
    - (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14 and fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
    - (3) For all other filings, sixty-five dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
  - b. For filing an answer to a case that is not a small claims action, fifty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
  - c. For filing a small claims action in district court, ten dollars.
  - d. For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, ten dollars.
  - e. For preparing, certifying, issuing, or transmitting any document, ten dollars, or a lesser fee as may be set by the state court administrator.
  - f. For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk

shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 253

### SENATE BILL NO. 2066

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact section 27-05.2-09 of the North Dakota Century Code, relating to the court facilities improvement advisory committee.

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

**SECTION 1. AMENDMENT.** Section 27-05.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**27-05.2-09. Court facilities improvement advisory committee - Members.**

1. The court facilities improvement advisory committee consists of:
  - a. One member appointed by the North Dakota association of counties to represent counties with a population fewer than seven thousand five hundred.
  - b. One member appointed by the North Dakota association of counties to represent counties with a population of seven thousand five hundred or more.
  - c. The state court administrator, who shall serve as chairman of the committee.
  - d. One member appointed by the state bar association of North Dakota.
  - e. One member appointed by the chairman of the legislative management.
2. The term of each member is three years. Initially, as determined by lot, one member shall serve for one year, two members shall serve for two years, and two members shall serve for three years. At the end of the member's term, the appointing authority shall appoint a successor for a full three-year term. Except for the state court administrator, a member may not serve more than two 3-year terms. A vacancy must be filled by the appointing authority for the remainder of the term.
3. At the initial meeting of the committee, the committee shall adopt rules of operation and procedure for the committee. The committee shall submit the rules to the supreme court for approval. The rules of operation must provide that a quorum of the committee consists of at least ~~four~~three members.
4. The members of the committee are entitled to reimbursement for travel and expenses as provided by law for other state officers. Travel and expense costs must be paid from funds from the court facilities improvement and maintenance fund.
5. The supreme court shall provide staff services for the committee.

Approved March 13, 2019

Filed March 14, 2019



**CHAPTER 254****HOUSE BILL NO. 1118**

(Representatives K. Koppelman, Boe, Buffalo, Schauer)  
(Senators J. Lee, Marcellais)

AN ACT to amend and reenact subsection 1 of section 27-09.1-05 of the North Dakota Century Code, relating to the master list for jury selection.

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

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

1. The clerk for each county shall compile and maintain a master list consisting of all lists of actual voters for the county supplemented with names from other lists of persons resident therein, such as lists of utility customers, property taxpayers, motor vehicle registrations, tribal registries if made available by a federally recognized Indian tribe in this state, and driver's licenses, which the supreme court of this state from time to time designates. In compiling the master list, the clerk shall avoid duplication of names.

Approved March 6, 2019

Filed March 6, 2019

## CHAPTER 255

### SENATE BILL NO. 2069

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 1 of section 27-20-06 of the North Dakota Century Code, relating to powers and duties of the director of juvenile court.

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

<sup>104</sup> **SECTION 1. 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 director shall:
  - a. Make investigations, reports, and recommendations to the juvenile court.
  - b. Receive and examine complaints and charges of delinquency or unruly conduct or deprivation of a child for the purpose of considering the commencement of proceedings under this chapter.
  - c. Supervise and assist a child placed on probation for delinquency or unruly conduct, or both.
  - d. Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.
  - e. Issue a temporary custody order concerning a child who is referred to the director's supervision or care as a delinquent, unruly, or deprived child. Except as provided by this chapter, a director does not have the powers of a law enforcement officer.
  - f. Administer oaths.
  - g. Take acknowledgments of instruments for the purpose of this chapter.
  - h. Make such temporary order not to exceed ninety-six hours for the custody and control of a child alleged to be deprived as may be deemed appropriate. The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.
  - i. Perform all other functions designated by this chapter or under section 27-05-30 or by order of the court pursuant thereto, including, if qualified, those of a referee.

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<sup>104</sup> Section 27-20-06 was also amended by section 3 of Senate Bill No. 2073, chapter 264.

- j. Issue an order to a law enforcement authority to transport a child to and from a specified location.
- k. Receive and examine requests for review of a child's placement at a qualified residential treatment program under the Family First Prevention Services Act [Pub. L. 115-123; 132 Stat. 64.; 42 U.S.C. 675a].

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 256

### HOUSE BILL NO. 1520

(Representatives B. Koppelman, Devlin, Heinert, Klemin, K. Koppelman, Marschall,  
Mock, Rohr)  
(Senators Hogue, O. Larsen, D. Larson, Myrdal)

AN ACT to create and enact a new subdivision to subsection 1 of section 27-20-51 and a new subsection to section 27-20-51 of the North Dakota Century Code, relating to inspection of juvenile court records; and to amend and reenact sections 12.1-04-01, 27-20-14, and 27-20-31, subsection 3 of section 50-25.1-02, and section 50-25.1-05.3 of the North Dakota Century Code, relating to assessing mental fitness and capacity, detention, disposition of delinquent child, and child sexual abuse assessment.

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

<sup>105</sup> **SECTION 1. AMENDMENT.** Section 12.1-04-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-04-01. Juveniles.**

###### **Persons**

1. An individual under the age of seventeen years areis deemed incapable of commission of an offense defined by the constitution or statutes of this state. The prosecution of any personan individual as an adult is barred if the offense was committed while the personindividual was less than fourteen years of age.
2. An individual ten years of age or older may be assessed for mental fitness or capacity under this chapter.

**SECTION 2. AMENDMENT.** Section 27-20-14 of the North Dakota Century Code is amended and reenacted as follows:

##### **27-20-14. Detention of child - Juvenile drug court exception.**

1. A child taken into custody may not be detained or placed in shelter care prior to the hearing on the petition unless the child's detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because the child has no parent, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or an order for the child's detention or shelter care has been made by the court pursuant to this chapter.
2. Law enforcement shall use a detention screening tool to assure the appropriate use of detention. The juvenile court shall establish the detention

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<sup>105</sup> Section 12.1-04-01 was also amended by section 1 of House Bill No. 1039, chapter 105.

screening tool, which must include objective factors to aid in the decision of placement of the child.

3. If a child is participating in a juvenile drug court program as a result of an adjudication for a delinquent offense, the drug court may order the child detained in a juvenile detention center operated pursuant to chapter 12-44.1. The child may be detained twice during the child's participation in the program but the total period of detention under this subsection may not exceed four days in a one-year period.

<sup>106</sup> **SECTION 3. AMENDMENT.** Section 27-20-31 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-31. Disposition of delinquent child.**

1. If the child is found to be a delinquent child, the court shall make findings and include in the order of disposition any actions or steps necessary to ensure:
  - a. The child receives the treatment or rehabilitation the court deems most appropriate;
  - b. Accountability to the victim; and
  - c. Safety of the community.
2. If the child is found to be a delinquent child, the court may make any of the following orders of disposition best suited to the child's treatment, rehabilitation, and welfare:
  1. a. Any order authorized by section 27-20-30 for the disposition of a deprived child;
  2. b. Placing the child on probation under the supervision of the director, probation officer, or other appropriate officer of the court or the director of the county social service board under conditions and limitations the court prescribes;
  3. c. 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. d. 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;

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<sup>106</sup> Section 27-20-31 was also amended by section 30 of Senate Bill No. 2124, chapter 391.

5. e. 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;
6. f. Ordering the periodic testing for the use of illicit drugs or alcohol pursuant to rules or policies adopted by the supreme court; or
7. g. Ordering the child's participation in a juvenile drug court program.
3. If the delinquent act committed by the child was a sexual offense, the court shall ensure the child is assessed in a timely manner, not to exceed thirty days, with age-appropriate social assessments to determine the appropriate level of required treatment.

**107 SECTION 4.** A new subdivision to subsection 1 of section 27-20-51 of the North Dakota Century Code is created and enacted as follows:

A victim of the delinquent child or the victim's guardian. All records including medical, educational, and school information must be redacted before inspection. For purposes of this subdivision, only records pertaining to the specific offense between the victim and the delinquent child may be inspected.

**108 SECTION 5.** A new subsection to section 27-20-51 of the North Dakota Century Code is created and enacted as follows:

An individual with access or authorization to inspect juvenile court files and records under this section may not share the information contained in the files and records with any other person not authorized by law. An individual who violates this subsection is guilty of a class B misdemeanor.

**109 SECTION 6. AMENDMENT.** Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual, including a juvenile, who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2.

**SECTION 7. AMENDMENT.** Section 50-25.1-05.3 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>107</sup> Section 27-20-51 was also amended by section 5 of House Bill No. 1520, chapter 256.

<sup>108</sup> Section 27-20-51 was also amended by section 4 of House Bill No. 1520, chapter 256.

<sup>109</sup> Section 50-25.1-02 was also amended by section 1 of House Bill No. 1108, chapter 416, section 124 of Senate Bill No. 2124, chapter 391, section 8 of Senate Bill No. 2245, chapter 406, and section 3 of Senate Bill No. 2273, chapter 108.

**50-25.1-05.3. Disposition of reports implicating a person not responsible for the child's health or welfare.**

1. Upon determination by the department or the department's designee that a report made under this chapter implicates a person other than a person responsible for a child's welfare, the department ~~may~~shall refer the report to an appropriate law enforcement agency for investigation and disposition.
2. If law enforcement determines a minor committed an act in violation of sections 12.1-20-01 through 12.1-20-04, section 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2 against another minor, law enforcement shall provide the report to the department. Law enforcement shall conduct a criminal investigation and shall coordinate with the department for the provision of services to the minors, parents, custodians, or other persons serving in loco parentis with respect to the minors.
3. The department shall provide risk assessment, safety planning, and any appropriate evidence-based screening for the minors and any other minors under the same care. The department shall refer the minors, parents, custodians, or other persons serving in loco parentis with respect to the minors, for appropriate services.

Approved April 17, 2019

Filed April 18, 2019

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**CHAPTER 257****SENATE BILL NO. 2088**

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 2 of section 27-20-24 of the North Dakota Century Code, relating to juvenile court.

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

<sup>110</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 27-20-24 of the North Dakota Century Code is amended and reenacted as follows:

2. If the hearing has not been held within the time limit, or any extension thereof, required by ~~subsection 1 of section 27-20-22~~supreme court rule, the petition must be dismissed.

Approved April 8, 2019

Filed April 9, 2019

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<sup>110</sup> Section 27-20-24 was also amended by section 1 of House Bill No. 1478, chapter 258.



## CHAPTER 258

### HOUSE BILL NO. 1478

(Representatives Boschee, Becker, Hanson, M. Johnson, K. Koppelman)  
(Senators Bakke, Hogue)

AN ACT to amend and reenact section 27-20-24 of the North Dakota Century Code, relating to juvenile hearings.

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

<sup>111</sup> **SECTION 1. AMENDMENT.** Section 27-20-24 of the North Dakota Century Code is amended and reenacted as follows:

##### **27-20-24. Conduct of hearings.**

1. Hearings under this chapter must be conducted by the court without a jury, in an informal but orderly manner, and separately from other proceedings not included in section 27-20-03.
2. If the hearing has not been held within the time limit, or any extension thereof, required by subsection 1 of section 27-20-22, the petition must be dismissed.
3. The state's attorney upon request of the court shall present the evidence in support of any allegations of the petition not admitted and otherwise conduct the proceedings on behalf of the state.
4. Except for informal adjustments under section 27-20-10, the proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.
5. Hearings are open to the public if the purpose of the hearing is to declare a person in contempt of court ~~or to consider a petition alleging an offense identified under subdivision b of subsection 1 of section 27-20-34 or subsection 2 of section 27-20-34.~~ The general public must be excluded from other hearings under this chapter. In hearings from which the general public is excluded, only the parties, their counsel, witnesses, victims, and any other persons the court finds have a proper interest in the proceedings may be admitted by the court. The court may temporarily exclude the child or other person from the hearing if, after being warned by the court that disruptive conduct will cause removal from the courtroom, the child or other person persists in conduct that justifies removal from the courtroom.

Approved March 27, 2019

Filed March 28, 2019

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<sup>111</sup> Section 27-20-24 was also amended by section 1 of Senate Bill No. 2088, chapter 257.

## CHAPTER 259

### SENATE BILL NO. 2185

(Senators Bakke, Myrdal, K. Roers)  
(Representatives Boschee, K. Koppelman)

AN ACT to amend and reenact subsection 1 of section 27-20-44 of the North Dakota Century Code, relating to termination of parental rights.

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

<sup>112</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 27-20-44 of the North Dakota Century Code is amended and reenacted as follows:

1. The court by order may terminate the parental rights of a parent with respect to the parent's child if:
  - a. The parent has abandoned the child;
  - b. The child is subjected to aggravated circumstances as defined under subsection 3 of section 27-20-02;
  - c. The child is a deprived child and the court finds:
    - (1) The conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or
    - (2) The child has been in foster care, in the care, custody, and control of the department, or a county social service board, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights; or
  - d. The written consent of the parent acknowledged before the court has been given.
  - e. The parent has pled guilty or nolo contendere to, or has been found guilty of engaging in a sexual act under section 12.1-20-03 or 12.1-20-04, the sexual act led to the birth of the parent's child, and termination of the parental rights of the parent is in the best interests of the child.

Approved April 11, 2019

Filed April 12, 2019

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<sup>112</sup> Section 27-20-44 was also amended by section 33 of Senate Bill No. 2124, chapter 391.

## CHAPTER 260

### HOUSE BILL NO. 1070

(Judiciary Committee)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to amend and reenact subsection 2 of section 27-20-49 of the North Dakota Century Code, relating to the payment of witness fees, mileage, and travel expenses in juvenile court.

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

<sup>113</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 27-20-49 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel provided at public expense for a party and the supreme court shall pay reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16, except the commission on legal counsel for indigents shall pay the witness fees, mileage, and travel expenses of witnesses subpoenaed by counsel employed by or contracted with the commission for proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.

Approved March 6, 2019

Filed March 6, 2019

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<sup>113</sup> Section 27-20-49 was also amended by section 6 of Senate Bill No. 2073, chapter 264, and section 38 of Senate Bill No. 2124, chapter 391.

## CHAPTER 261

### SENATE BILL NO. 2053

(Senators D. Larson, Schaible, Poolman)  
(Representatives Nathe, Owens, Schreiber-Beck)

AN ACT to amend and reenact section 27-20-52 of the North Dakota Century Code, relating to inspection of law enforcement and correctional facility records and files of a child by an assistant superintendent or designee of a school.

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

**SECTION 1. AMENDMENT.** Section 27-20-52 of the North Dakota Century Code is amended and reenacted as follows:

#### **27-20-52. Law enforcement and correctional facility records.**

1. 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, the law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection; but inspection of these records and files is permitted by:
  - a. A juvenile court having the child before it in any proceeding;
  - b. Counsel for a party to the proceeding;
  - c. The officers of public institutions or agencies to whom the child is or may be committed;
  - d. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
  - e. 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 correctional facilities to which the child is detained or committed, or by the parole board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child;
  - f. The professional staff of the uniform crime victims compensation program when necessary for the discharge of its duties pursuant to chapter 54-23.4; and
  - g. A superintendent, assistant superintendent, ~~or principal, or designee~~ of the school in which the child is currently enrolled or of a school in which the child wishes to enroll.
2. 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,

this section does not limit the release of general information that does not identify the identity of the child.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 262

### SENATE BILL NO. 2074

(Judiciary Committee)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to amend and reenact subsection 2 of section 27-20-54 of the North Dakota Century Code, relating to the destruction of juvenile court records.

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

<sup>114</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 27-20-54 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon the final destruction of a file or record, the proceeding must be treated as if it never occurred. The juvenile court shall notify each agency named in the file or record of the destruction. All index references, except those which may be made by the attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, the commission on legal counsel for indigents and its public defender offices, law enforcement agencies, and county social service agencies, must be deleted. Each agency, except the attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, the commission on legal counsel for indigents and its public defender offices, law enforcement agencies, and county social service agencies, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court. The attorney general, the department of human services, the department of corrections and rehabilitation, the commission on legal counsel for indigents and its public defender offices, law enforcement agencies, and county social service agencies may not keep a juvenile file or record longer than is required by the records retention policy of that official, department, or agency. Upon inquiry in any matter the child, the court, and representatives of agencies, except the attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, law enforcement agencies, and county social service agencies, shall properly reply that no record exists with respect to the child.

Approved March 14, 2019

Filed March 14, 2019

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<sup>114</sup> Section 27-20-54 was also amended by section 39 of Senate Bill No. 2124, chapter 391.

## CHAPTER 263

### SENATE BILL NO. 2153

(Senators Poolman, Kannianen, D. Larson, Marcellais)  
(Representatives Keiser, Roers Jones)

AN ACT to create and enact a new section to chapter 27-20 of the North Dakota Century Code, relating to cooperative agreements to provide services to juveniles adjudicated in tribal court; to provide for a report to legislative management; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

#### Tribal juvenile services cooperative agreement - Report to legislative management.

1. The department of corrections and rehabilitation, through the division of juvenile services; the supreme court, through the office of the state court administrator; and the Indian affairs commission may negotiate and enter a memorandum of understanding with the tribal government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for, in accordance with this chapter, the treatment and rehabilitation of tribal juveniles who have been adjudicated in tribal court under tribal or federal laws. Under the pilot program and terms of a memorandum of understanding:
  - a. The tribal government and the juvenile court may exchange information relevant to the treatment and rehabilitation needs of a tribal juvenile and the juvenile's family, including tribal court orders, medical and psychiatric reports, law enforcement reports, and other information pertinent to the referral;
  - b. The juvenile court shall provide services based on the individualized need of each tribal juvenile referred to and accepted by both the tribal and juvenile court;
  - c. The juvenile court shall maintain regular contact with the tribe regarding each tribal juvenile who has been placed in the supervision of the juvenile court and shall provide quarterly case plans and more frequent reports if the juvenile's behavior warrants; and
  - d. The juvenile court may limit the number of tribal juveniles accepted based on criteria developed by the juvenile court and the availability of state resources and services.
2. Before July first of each even-numbered year, the department of corrections and rehabilitation, the juvenile court, and the Indian affairs commission shall report and make recommendations to the legislative management on the status, effectiveness, performance, and sustainability of a memorandum of understanding established under this section.

**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2021, and after that date is ineffective.

Approved March 28, 2019

Filed March 29, 2019



## CHAPTER 264

### SENATE BILL NO. 2073

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to create and enact chapter 27-20.1 of the North Dakota Century Code, relating to guardianships of children; to amend and reenact subsection 11 of section 27-20-02, section 27-20-03, subsection 1 of section 27-20-06, sections 27-20-46, 27-20-48.1, and subsection 1 of section 27-20-49 of the North Dakota Century Code, relating to guardianships of children; and to repeal sections 27-20-48.2, 27-20-48.3, and 27-20-48.4 of the North Dakota Century Code, relating to guardianships of children.

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

<sup>115</sup> **SECTION 1. AMENDMENT.** Subsection 11 of section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

11. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chapter 50-11.3, to be a qualified person under ~~chapter~~chapters 27-20.1 and 30.1-27, and who consents in writing to act as a legal guardian.

**SECTION 2. AMENDMENT.** Section 27-20-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **27-20-03. Jurisdiction.**

1. The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this chapter:
  - a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
  - b. Proceedings for the termination of parental rights except when a part of an adoption proceeding;
  - c. Proceedings arising under section 27-20-30.1; and
  - d. Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04 for which a child is alleged to have possessed forfeitable property. The juvenile court shall conduct the proceedings in accordance with the procedures provided for under sections 19-03.1-36 through 19-03.1-37.

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<sup>115</sup> Section 27-20-02 was also amended by section 24 of Senate Bill No. 2124, chapter 391.

2. The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this chapter:
  - a. Proceedings to obtain judicial consent to the marriage, employment, or enlistment in the armed services of a child, if consent is required by law;
  - b. Proceedings under the interstate compact on juveniles;
  - c. Proceedings under the interstate compact on the placement of children; and
  - d. Proceedings arising under section 50-06-06.13 to obtain a judicial determination that the placement of a severely emotionally disturbed child in an out-of-home treatment program is in the best interests of the child.
3. ~~The juvenile court has concurrent jurisdiction with the district court of proceedings for the appointment of a guardian for a minor which, if originated under this chapter, are governed by this chapter and chapter 30.1-27.~~

<sup>116</sup> **SECTION 3. 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 director shall:
  - a. Make investigations, reports, and recommendations to the juvenile court.
  - b. Receive and examine complaints and charges of delinquency or unruly conduct or deprivation of a child for the purpose of considering the commencement of proceedings under this chapter.
  - c. Supervise and assist a child placed on probation for delinquency or unruly conduct, or both.
  - d. Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.
  - e. Issue a temporary custody order concerning a child who is referred to the director's supervision or care as a delinquent, unruly, or deprived child. Except as provided by this chapter, a director does not have the powers of a law enforcement officer.
  - f. Administer oaths.
  - g. Take acknowledgments of instruments for the purpose of this chapter.
  - h. Make such temporary order not to exceed ninety-six hours for the custody and control of a child alleged to be deprived as may be deemed appropriate. The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.

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<sup>116</sup> Section 27-20-06 was also amended by section 1 of Senate Bill No. 2069, chapter 255.

- i. Perform all other functions designated by this chapter or under section 27-05-30 or by order of the court pursuant thereto, including, if qualified, those of a referee.
- j. Issue an order to a law enforcement authority to transport a child to and from a specified location.
- k. Receive and examine petitions to establish, modify, or terminate a guardianship of a minor under chapter 27-20.1.

**SECTION 4. AMENDMENT.** Section 27-20-46 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-46. Effect of order terminating parental rights or appointing a legal guardian.**

1. An order terminating parental rights of a parent terminates all the parent's rights and obligations with respect to the child and of the child to or through the parent arising from the parental relationship. The parent is not thereafter entitled to notice of proceedings for the adoption of the child by another nor has the parent any right to object to the adoption or otherwise to participate in the proceedings.
2. ~~An order appointing a legal guardian terminates any authority of a parent that is granted to the legal guardian under that order. A parent subject to such an order is entitled to treatment as a party at any subsequent juvenile court proceeding regarding the child.~~

**SECTION 5. AMENDMENT.** Section 27-20-48.1 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-48.1. Appointment of legal guardian of a child.**

The court may establish a guardianship under chapter 27-20.1 as a dispositional alternative if a child has been adjudicated as deprived, unruly, or delinquent.

<sup>117</sup> **SECTION 6. AMENDMENT.** Subsection 1 of section 27-20-49 of the North Dakota Century Code is amended and reenacted as follows:

1. The following expenses are a charge upon the funds of the county upon certification thereof by the court:
  - a. The cost of medical and other examinations and treatment of a child ordered by the court.
  - b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children or to a private agency or individual other than a parent.
  - c. The cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court unless the child is in the legal custody of a state agency.
  - d. The cost of a guardian ad litem under subsection 5 of section 27-20.1-16 or section 30.1-27-06 or the cost of an attorney under subsection 6 of

<sup>117</sup> Section 27-20-49 was also amended by section 1 of House Bill No. 1070, chapter 260, and section 38 of Senate Bill No. 2124, chapter 391.

section 27-20.1-16 if the court finds the parent's or child's estate is insufficient to meet the cost.

**SECTION 7.** Chapter 27-20.1 of the North Dakota Century Code is created and enacted as follows:

**27-20.1-01. Definitions.**

The definitions set forth in section 27-20-02 are applicable to this chapter.

**27-20.1-02. Jurisdiction.**

The juvenile court has exclusive original jurisdiction of proceedings to grant, modify, or terminate guardianship for a child, except the testamentary appointment of a guardian for a minor governed by chapter 30.1-27.

**27-20.1-03. Transfer from district court.**

If a court does not approve acceptance of a testamentary guardian of a minor under chapter 30.1-27, the court shall immediately transfer the guardianship portion of the case to the juvenile court and order the child be taken to the juvenile court immediately or to a place of shelter care designated by the juvenile court, or release the child to the custody of the child's custodian, relative, or other responsible adult able and willing to assume custody of the child, to be brought to the juvenile court at a time designated by the court. The juvenile court shall immediately reappoint the guardian ad litem who served in the probate case whenever possible, or shall immediately appoint an alternative guardian ad litem.

**27-20.1-04. Venue.**

Except as otherwise provided by this section, a proceeding under this chapter must be commenced in the county in which the child resides. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced, the county in which the child has resided for the majority of the thirty days prior to the date of the alleged deprivation, or the county where the alleged deprivation has occurred. The court shall determine the appropriate venue for a deprivation action based on the best interest of the child.

**27-20.1-05. Petition - Who may file.**

A petition to establish, modify, or terminate a guardianship order, other than one that has been transferred by the district court under chapter 30.1-27, may be filed by any person interested in the welfare of the child who has knowledge of the facts alleged or has information and belief that the facts are true.

**27-20.1-06. Contents of petition to appoint guardian of a child.**

1. The petition must state that an order to appoint a guardian of a child is requested and the effect will be as stated in section 27-20.1-13.
2. The petition must also contain information required by rule 3 of the North Dakota Rules of Juvenile Procedure and include:
  - a. The name, address, and telephone number of the petitioner and the petitioner's relationship to the child;

- b. The full legal name and date of birth of the child, accompanied by a certified copy of the child's birth certificate unless the petitioner shows good cause for why the child's birth certificate is unavailable;
- c. The name, last known address, and telephone number of the mother and the name, last known address, and telephone number of the father, alleged father, or presumed father;
- d. If the name, last known address, or telephone number of the parents is not included, detailed information concerning the efforts made to locate the parents;
- e. The name, last known address, and telephone number of the persons having parental rights or visitation rights and the name, address, and telephone number of the persons or entity having the care, custody, or control of the child;
- f. The names, current addresses, and telephone numbers of the persons with whom the child currently lives;
- g. The names, addresses, and telephone numbers of the persons with whom the child has lived during the last five years;
- h. The names of any siblings or half-siblings of the child and with whom each sibling and half-sibling currently lives;
- i. The name and address of the proposed guardian, if different from the petitioner;
- j. The occupation and qualifications of the proposed guardian;
- k. The names, addresses, and telephone numbers of the spouse, parents, adult children, any adult siblings of the proposed guardian, and any adult who resides with or may reside with the proposed guardian;
- l. A brief description and the approximate value of the real and personal property and income of the child, so far as they are known to the petitioner;
- m. A brief description and the approximate value of any anticipated income of the child;
- n. A statement regarding each parent that that:
  - (1) The parent is deceased, accompanied by a copy of the death certificate;
  - (2) The parent consents to the guardianship, accompanied by an affidavit of the parent indicating consent and any limitations on the guardian's duties under section 27-20.1-15;
  - (3) The parent's rights have been previously terminated, accompanied by a certified copy of the court order terminating parental rights; or

- (4) The parent has deprived the child as that term is defined under section 27-20-02;
- o. A statement whether the petitioner:
- (1) Has participated, as a party, a witness, or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any; and
- (2) Knows of any proceeding that could affect the current proceeding, including proceedings for child support enforcement and proceedings relating to domestic violence protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;
- p. A statement setting forth the reasons why the petition is in the child's best interests; and
- q. A statement of whether the child is an Indian child as defined under Public Law 95-608 [92 Stat. 3069; 25 U.S.C.1903]. If the child is an Indian child, the petition must comply with the requirements of Public Law 95-608 [92 Stat. 3071; 25 U.S.C. 1911 et seq.].

**27-20.1-07. Procedure upon filing of petition.**

1. A supporting affidavit establishing the basis for the guardianship under subdivision n of subsection 2 of section 27-20.1-06, and that the guardianship is in the best interest of the child, must be filed with the petition. Where deprivation is alleged under paragraph 4 of subdivision n of subsection 2 of section 27-20.1-06, the petition must contain sufficient statements to establish deprivation unless the child has resided in the home of the proposed guardian for at least one year before the filing date of the petition.
2. A petition under this chapter must be reviewed by the court to determine whether the contents of the petition comply with section 27-20.1-06.
3. If a petition alleges deprivation, the petition will be reviewed by the court to determine whether there has been a sufficient showing of deprivation.
4. If the petitioner has made an insufficient showing of deprivation, the court, without oral argument or an evidentiary hearing shall issue an order denying the petition. If the petitioner has made a sufficient showing of deprivation justifying a guardianship, the court shall set a date for an evidentiary hearing.

**27-20.1-08. Procedure upon approval of petition.**

1. The court shall issue a summons in accordance with rule 5 of the North Dakota Rules of Juvenile Procedure and appoint a lay guardian ad litem upon the approval of the petition.
2. An initial hearing must be set in accordance with rule 2 of the North Dakota Rules of Juvenile Procedure.
3. For a petition filed under paragraphs 1, 2, or 3 of subdivision n of subsection 2 of section 27-20.1-06;

- a. The petitioner may request the court waive the hearing requirement.
- b. The petition must state any person interested in the welfare of the child who opposes the appointment of the proposed guardian shall file an objection to the appointment and a demand for hearing within ten days of the service of the petition. If an objection is not filed within ten days, the court may order the appointment of a guardian for the child without a hearing upon review of the guardian ad litem's report.
- c. If the petition is unopposed, the court may order appointment of a guardian on the strength of the pleadings, including the report of the guardian ad litem, if satisfied that the conditions of paragraphs 1, 2, or 3 of subdivision n of subsection 2 of section 27-20.1-06 have been met, or may conduct a hearing and require proof of the matters necessary to support the order sought. Before appointment of the guardian, the court shall consider whether the child has or will have significant excess assets and determine whether a conservatorship is necessary under chapter 30.1-29.
- d. The guardian ad litem shall file a report in accordance with rule 17 of the North Dakota Rules of Juvenile Procedure, within twenty days after appointment.

#### **27-20.1-09. Right to counsel.**

1. If, at any time in the proceeding, the court determines the interests of the child are or may be inadequately represented, the court may appoint an attorney to represent the child.
2. At a proceeding commenced under this chapter, a parent who is indigent and unable to employ legal counsel is entitled to counsel at public expense. If a parent appears without counsel the court shall ascertain whether the parent knows the parent may be represented by counsel and that the parent is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable the parent to obtain counsel and, subject to this section, counsel must be provided for an unrepresented indigent parent upon the parent's request and the court's determination that the parent is indigent.
3. An indigent parent is one who meets the definition of indigent under the guidelines adopted by the commission on legal counsel for indigents.

#### **27-20.1-10. Conduct of hearings.**

1. A hearing under this chapter must be conducted by the court without a jury, in an informal but orderly manner, and separately from other proceedings not included in section 27-20-03 or section 27-20.1-02.
2. The proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.
3. The petitioner shall present the evidence in support of any allegations of the petition not admitted.
4. The general public must be excluded from the hearing and only the parties, their counsel, witnesses, victims, and any other persons the court finds to have an interest in the proceedings may be admitted. The court may temporarily exclude the child or other person from the hearing if, after being

warned by the court that disruptive conduct will cause removal from the courtroom, the child or other person persists in conduct justifying removal from the courtroom.

5. If the child has or will have significant excess assets, the court shall determine whether a conservatorship is necessary under chapter 30.1-29.

#### **27-20.1-11. Appointment of guardian of a child.**

1. The court may appoint a guardian of a child if the court finds by clear and convincing evidence that the appointment is in the child's best interest and:
  - a. Both parents are deceased or the surviving parent's rights have been terminated by a previous court order, but there has been no appointment of a guardian for the child by will, the court has transferred the case to juvenile court without appointment of a guardian, or the testamentary guardian failed to accept the appointment under chapter 30.1-27;
  - b. The parents have consented in writing by affidavit;
  - c. All parental rights have been previously terminated; or
  - d. The child is a deprived child as defined under section 27-20-02.
2. The court may appoint as guardian any fit and willing person whose appointment would be in the best interest of the child. If the court finds by clear and convincing evidence that the child is of sufficient maturity to make a sound judgment, or the child is age fourteen or older, the court may give substantial weight to the preference of the child. The court shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.
3. The court may appoint a guardian as a dispositional alternative if a child has been adjudicated as deprived, unruly, or delinquent under chapter 27-20.

#### **27-20.1-12. Findings on petition to appoint guardian of a child - Order of appointment.**

1. After hearing the evidence on the petition or after a waiver of the hearing, the court shall make and file its findings as to whether the requirements of section 27-20.1-06 have been met, whether the guardian is a fit and willing person, and whether the appointment of the guardian is in the child's best interest.
2. Upon finding that the requirements of section 27-20.1-06 have been met, the guardian is a fit and willing person, and the appointment of the guardian is in the child's best interest, the court shall order the appointment. The order must contain:
  - a. The name, address, and telephone number of the guardian.
  - b. Notice of the right to appeal the guardianship appointment and of the right to seek modification or termination of the guardianship at any time.
  - c. If appropriate and in the child's best interest, the court shall determine the nature and extent, if any, of any contact, sharing of information, and



- visitation between the parents and the child, and the child and any other interested person.
- d. A requirement that the guardian provide, within ninety days from the date of the order, a beginning inventory of any assets owned by the child or in which the child has an interest. The guardian shall file with the court and serve a copy of the beginning inventory on the child if the child is fourteen years of age or older, and any interested persons designated by the court in its order.
  - e. The date on which the first annual report is due and the requirement to file annually thereafter.
  - f. The length of time the order is effective. An order appointing or reappointing a guardian under this chapter is effective for up to one year unless the court, upon a showing of good cause, sets a different time frame. An order may not be effective for more than three years.

### **27-20.1-13. Effect of order appointing a guardian.**

1. An order appointing a guardian of a child suspends any authority of a parent that is granted to the guardian under that order. A parent subject to such an order is entitled to treatment as a party at any subsequent juvenile court proceeding regarding the child.
2. While a guardianship is in effect, the parent has the following rights:
  - a. Parenting time, contact, and information, to the extent delineated in the guardianship order issued by the court. A parent may petition the court for specific enforcement provisions of the order relating to contact, parenting time, or information; and
  - b. Inheritance from the child.
3. The parent has the primary responsibility to financially support the child.

### **27-20.1-14. Acceptance of appointment - Consent to jurisdiction - Letters of guardianship.**

1. By accepting the appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.
2. By accepting the appointment, a guardian acknowledges the duty to file an annual report under section 27-20.1-15.
3. Upon the guardian's acceptance of the appointment, the court shall issue letters of guardianship. The letters of guardianship must contain:
  - a. The name, address, and telephone number of the guardian;
  - b. The full name of the child;
  - c. Any limitations on the guardian's authority to make decisions on behalf of the child;

- d. The expiration date of the appointment; and
- e. The date by which the guardian must file the annual report required under section 27-20.1-15.

**27-20.1-15. Powers and duties of guardian of a child.**

1. A guardian of a child has the powers and responsibilities of a legal custodian if there is a parent with remaining parental rights. If there is no parent with remaining parental rights, the guardian has the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment. A guardian is not liable to third persons by reason of the parental relationship for acts of the child.
2. A guardian has the following powers and duties:
  - a. The guardian must take reasonable care of the child's personal effects and commence protective proceedings if necessary to protect other property of the child.
  - b. The guardian may receive money payable for the support of the child to the child's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship, or custodianship.
    - (1) The guardian may receive money or property of the child paid or delivered by virtue of section 30.1-26-03. Any sums received must be applied to the child's current needs for support, care, and education.
    - (2) The guardian must exercise due care to conserve any excess sum for the child's future needs unless a conservator has been appointed for the estate of the child, in which case the excess sum must be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for the guardian's services except as approved by order of the court or as determined by a duly appointed conservator other than the guardian.
    - (3) The guardian may not use funds from the child's estate for room and board that the guardian or the guardian's spouse have furnished to the child unless a charge for the service is approved by order of the court made upon notice to at least one of the child's next of kin, if notice is possible.
    - (4) A guardian may institute proceedings to compel the performance by any person of a duty to support the child or to pay sums for the welfare of the child.
  - c. To facilitate the child's education, social, or other activities.
  - d. To authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the child resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented.

- e. A guardian shall file an annual report with the court regarding the exercise of powers and duties under this subsection.
- (1) The report must describe the status or condition of the child, including any change of residence and reasons for the change, any medical treatment received by or withheld from the child, the child's educational progress, any expenditure and income affecting the child, and any exercise of legal authority by the guardian affecting the child.
  - (2) The report must include changes that have occurred since the previous reporting period and an accounting of the child's estate.
  - (3) The guardian shall report whether the child continues to require a guardianship.
  - (4) The report must be filed with the court.
  - (5) The filing of the report does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report.
  - (6) The court shall review the report and a hearing may be set.
  - (7) The office of the state court administrator shall provide forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form.
  - (8) Copies of the guardian's annual report and of any other reports required by the court must be mailed to the child, if the child is age fourteen or older, the child's parents, unless the parents' rights have been terminated or the parents are deceased, and any interested persons designated by the court in its order.
  - (9) If a guardian fails to file a complete annual report as required by this subdivision, fails to file a report at other times as the court may direct, or fails to provide an accounting of an estate, the court, upon its own motion or upon petition of any interested person, may issue an order compelling the guardian to show cause why the guardian should not immediately make and file the report or account, or be found in contempt for failure to comply. A copy of the order to show cause must be provided to the child, if the child is age fourteen or older, the child's parents, unless the parents' rights have been terminated or the parents are deceased, any interested persons designated by the court in its order, and the juvenile court director.
- f. The guardian shall inform the court of any change in the child's residence within thirty days of the change, but must seek prior authorization of the court to establish or move the child's residence outside of the state.
- g. In determining what is in the child's best interest, the guardian shall take into account the child's preferences to the extent actually known or reasonably ascertainable by the guardian.
- h. To the extent reasonable, the guardian shall delegate to the child responsibilities for decisions affecting the child's well-being.

- i. The guardian may not delegate authority as a guardian under a power of attorney without prior approval from the court.

**27-20.1-16. Procedure for modification, resignation, or termination of a guardianship.**

1. A guardian may petition for permission to resign. A petition for permission to resign must include a request for appointment of a successor guardian unless continuation of the guardianship is no longer necessary. Resignation of a guardian does not terminate the guardianship unless specifically ordered by the court.
2. Any party to the proceeding in which the child's status was adjudicated, the director, the child, if fourteen or more years of age, or any interested person, may petition for removal or modification of a guardian on the grounds the removal or modification would be in the best interest of the child. A petition for removal or modification must include a request for appointment of a successor guardian unless continuation of the guardianship is no longer necessary.
3. Any party to the proceeding in which the child's status was adjudicated, the director, the child, if fourteen or more years of age, or any interested person, may petition for termination of the guardianship due to:
  - a. The child's death, adoption, marriage, or attainment of majority;
  - b. The withdrawal of the parent's consent; or
  - c. The basis for the guardianship no longer exists.
4. The person seeking modification, resignation, removal, or termination of the guardianship shall file a supporting affidavit with the petition demonstrating the basis for the petition, and serve the petition and affidavit on the child, if the child is age fourteen or older, the child's parents, unless the parents' rights have been terminated or the parents are deceased, and any interested persons designated by the court in its order. The petition must be reviewed by the court to determine whether to set an evidentiary hearing. If an insufficient showing has been made, the court shall issue an order denying the petition.
5. If, at any time in the proceeding, the court determines it is in the best interest of the child, the court may appoint a guardian ad litem.
6. If, at any time in the proceeding, the court determines the interests of the child are or may be inadequately represented, the court may appoint an attorney to represent the child.

**27-20.1-17. Expiration and termination of guardianship of a child.**

1. An order appointing or reappointing a guardian under this chapter is effective for up to one year unless the court, upon a finding of good cause, sets a different time frame. An order may not be effective for more than three years. At least sixty days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, the child, if fourteen years of age or older, the child's attorney, if any, the child's parents, and any interested persons regarding whether the need for a guardianship continues to exist. The court, at its discretion, may appoint a guardian ad litem in accordance with

section 27-20.1-08, before the hearing. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may:

- a. Terminate the guardianship if shown by clear and convincing evidence that the circumstances that led to the guardianship no longer exist;
  - b. Reappoint the guardian for up to three years; or
  - c. Appoint a new guardian.
2. A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian, or upon the child's death, adoption, marriage, or attainment of majority, but termination does not affect the guardian's liability for prior acts or the guardian's obligation to account for funds and assets of the child. For cases arising under section 27-20-30.1, the age of majority is age twenty-one.
  3. The supreme court, by rule or order, shall provide for the regular review of guardianships in existence on August 1, 2019.

#### **27-20.1-18. Appointment of emergency guardian of a child.**

1. Upon petition by a person interested in the child's welfare, the court may appoint an emergency guardian if the court finds that compliance with the procedures of this chapter will likely result in substantial harm to the child's health, safety, or welfare. Immediately upon receipt of the petition for an emergency guardian, the court shall appoint a guardian ad litem to advocate for the best interests of the child.
2. An emergency guardian may be appointed without hearing or notice to the child, the child's parent or legal custodian, or the child's guardian ad litem only if the court finds from affidavit or other sworn testimony that the child will be substantially harmed before a hearing can be held. If the court appoints an emergency guardian without hearing or notice to the child, the child's parent or legal custodian, or the child's guardian ad litem, the child, the child's parent or legal custodian, and the child's guardian ad litem must be given notice of the emergency appointment by the petitioner within forty-eight hours after the emergency appointment. The court shall hold a hearing on the appropriateness of the emergency appointment within ninety-six hours after the emergency appointment or filing of the petition.
3. Reasonable notice, either oral or written, stating the time, place, and purpose of the hearing must be given to the child, if fourteen years of age or older, and, to the child's parents or legal custodian, if they can be found. If oral notice is provided, the petitioner must file an affidavit stating that oral notice including the time, place, and purpose of the hearing has been provided.
4. The court shall determine if there is probable cause to believe the emergency appointment is in the best interest of the child and one of the provisions of subsection 1 of section 27-20.1-11 is met.
5. If the emergency guardian is found to be appropriate, the court may order the emergency guardian remain in place for no more than sixty days from the date of the hearing. The court may extend the emergency order for up to six months.

6. A request for an emergency guardian may be included in a petition for appointment of a guardian of a child under section 27-20.1-05.

#### **27-20.1-19. Attorney's fees.**

If the court determines an action brought under section 30.1-27-07 or this chapter is frivolous, the court may award reasonable, actual, and statutory costs, including reasonable attorney's fees, incurred by or on behalf of the child.

#### **27-20.1-20. Protective order.**

1. At any stage of the proceedings, upon application of a party or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of an individual if the court finds the conduct:
  - a. Is or may be detrimental or harmful to the child; or
  - b. Will tend to defeat the execution of an order of disposition; and
2. Due notice of the application or motion and the grounds therefor and an opportunity to be heard have been given to the person against whom the order is directed.

#### **27-20.1-21. Orders for evaluation.**

1. The court may order a party or a proposed guardian to submit to a chemical dependency, parental capacity, mental health, domestic violence, anger management, or other relevant evaluation by a suitably licensed or certified examiner. The court may request other persons having regular contact with the child submit to a chemical dependency, parental capacity, mental health, domestic violence, anger management, or other relevant evaluation by a suitably licensed or certified examiner. Failure to submit to an evaluation will be taken into consideration by the court.
2. The order may be made only on motion for good cause by a party or guardian ad litem, or on the court's own motion, and on notice to all parties and the person to be evaluated. The order must:
  - a. Specify the type of evaluation and the type of professional or entity to perform the evaluation;
  - b. Include the deadline for performing the evaluation;
  - c. Include the date by which the evaluation must be filed with the court; and
  - d. Specify the party that must pay the costs of the evaluation. If the party is unable to pay the costs, the court may direct the costs to be paid, in whole, or in part, by the county. The court may direct the party to reimburse the county, in whole or in part, for the payment.
3. The evaluation must be in writing and must set out in detail the evaluator's findings, including diagnoses, conclusions, and the results of any tests. The evaluator must file a copy with the court.
4. The evaluation reports and any addendums are confidential. The public or the parties may not read or copy the evaluation reports or addendums unless the

court, in its discretion, gives permission. The guardian ad litem may read the evaluation reports and addendums but may not copy the evaluation reports and addendums unless the court, in its discretion, gives permission. A party, proposed guardian, or other person requested to submit to an evaluation by the court under this section is entitled to a copy of the report of evaluation and any addendum, upon request.

**27-20.1-22. Confidentiality.**

Except as provided by section 27-20-51, all files and records under this chapter are closed to the public and confidential.

**SECTION 8. REPEAL.** Sections 27-20-48.2, 27-20-48.3, and 27-20-48.4 of the North Dakota Century Code are repealed.

Approved April 11, 2019

Filed April 12, 2019

# JUDICIAL PROCEDURE, CIVIL

## CHAPTER 265

### SENATE BILL NO. 2264

(Senators Unruh, Klein, Schaible)  
(Representatives Howe, Nathe, Porter)

AN ACT to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to the board of university and school lands and exempt administrative agencies.

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

<sup>118</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
  - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
  - b. The adjutant general with respect to the department of emergency services.
  - 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.

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<sup>118</sup> Section 28-32-01 was also amended by section 6 of House Bill No. 1521, chapter 472, and section 2 of Senate Bill No. 2215, chapter 144.



- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
- 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 attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- s. 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.
- t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- u. 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.
- v. The commission on legal counsel for indigents.
- w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
- x. The industrial commission with respect to approving or setting water rates under chapter 61-40.
- y. The board of university and school lands with respect to the adjudicative proceeding requirements and procedures under sections 28-32-21 through 28-32-51.

Approved April 15, 2019

Filed April 15, 2019

## CHAPTER 266

### HOUSE BILL NO. 1275

(Representatives K. Koppelman, D. Anderson, Hatlestad, Heinert, Lefor, Louser,  
Toman)  
(Senators Heckaman, Kreun, J. Roers)

AN ACT to amend and reenact section 28-32-02 of the North Dakota Century Code, relating to limitations on the adoption of administrative rules; and to provide for retroactive application.

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

**SECTION 1. AMENDMENT.** Section 28-32-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **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. An administrative agency may not adopt a rule that prescribes a criminal penalty unless authorized by another chapter.
2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.

**SECTION 2. RETROACTIVE APPLICATION.** This Act is retroactive in application and any rule adopted before the effective date of this Act which prescribes a penalty in violation of this Act is void.

Approved April 17, 2019

Filed April 18, 2019

## CHAPTER 267

### HOUSE BILL NO. 1422

(Representative Devlin)

AN ACT to amend and reenact sections 28-32-20 and 54-03-24 of the North Dakota Century Code, relating to electronic notification of the administrative code.

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

**SECTION 1. AMENDMENT.** Section 28-32-20 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-20. ~~Printing, sales, and distribution~~Notification of code and code supplement.**

1. The legislative council shall publish the code and code supplement on the legislative branch website.
2. The secretary of state shall ~~distribute~~send electronic notification of quarterly updates to the code and code supplement and shall distribute copies of the code, revisions, and the code supplement without charge to the following:
  - a. Governor, ~~one copy.~~
  - b. Attorney general, ~~one copy.~~
  - c. Each supreme court judge, ~~one copy~~justice.
  - d. Each district court judge, ~~one copy.~~
  - e. Each county auditor of this state, ~~for the use of county officials and the public, one copy.~~
  - f. Supreme court library, ~~one copy.~~
  - g. State library, ~~one copy.~~
  - h. Law library of the university of North Dakota, ~~one copy.~~
  - i. Each of the five depository libraries in this state, ~~one copy, upon request.~~
  - j. Secretary of state, ~~one copy.~~
  - k. Legislative council, ~~four copies.~~
  - l. Each member of the legislative assembly, one copy, upon requestUpon request, to any person requesting electronic notification of quarterly updates to the code.
2. 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 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. If applicable, 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.~~

**SECTION 2. 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 code.**

~~Each member of the legislative assembly is entitled to receive a current set of the North Dakota Administrative Code~~electronic notification of quarterly updates to the North Dakota administrative code as provided in section 28-32-20. ~~The legislator is entitled to current supplements and volumes as provided in section 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.~~

Approved April 4, 2019

Filed April 5, 2019

# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 268

### HOUSE BILL NO. 1425

(Representatives Brandenburg, Mitskog)  
(Senators Grabinger, Hogan, Wanzek)

AN ACT to create and enact two new subsections to section 12.1-34-02 of the North Dakota Century Code, relating to treatment standards for victims and medical screening; and to amend and reenact section 29-04-03.1 of the North Dakota Century Code, relating to prosecution for sexual abuse of minors.

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

**119 SECTION 1.** Two new subsections to section 12.1-34-02 of the North Dakota Century Code are created and enacted as follows:

Access to law enforcement report. Upon request of the child sexual abuse victim over the age of eighteen, the prosecuting attorney or law enforcement authority shall provide the victim with a copy of the law enforcement report corresponding with the victim's case number.

Preservation of evidence. A prosecuting attorney, law enforcement authority, criminal laboratory, or evidentiary storage facility may not destroy or dispose of any evidence to a criminal offense before the limitation period for prosecution for the offense has ended or the offense has been adjudicated.

**SECTION 2. AMENDMENT.** Section 29-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **29-04-03.1. Prosecution for sexual abuse of minors.**

1. Except as provided in subsection 2, a prosecution for a violation of sections 12.1-20-03 through 12.1-20-08 or of section 12.1-20-11 if the victim was under eighteen years of age at the time the offense was committed must be commenced in the proper court within ~~ten~~ twenty-one years after the commission of the offense or, if the victim failed to report the offense within this limitation period, within three years after the offense was reported to law enforcement authorities.
2. If, based upon evidence containing deoxyribonucleic acid or a fingerprint obtained at the time of offense, a suspect is conclusively identified by deoxyribonucleic acid testing after the time period prescribed in subsection 1 has expired, a prosecution may be commenced within three years after the suspect is conclusively identified by the deoxyribonucleic acid testing or fingerprint authentication.

Approved March 21, 2019

Filed March 22, 2019

<sup>119</sup> Section 12.1-34-02 was also amended by section 4 of House Bill No. 1252, chapter 117.

## CHAPTER 269

### HOUSE BILL NO. 1234

(Representatives Roers Jones, Boschee, Satrom)  
(Senators Myrdal, Oban)

AN ACT to amend and reenact sections 29-06-05.2 and 29-06-15 of the North Dakota Century Code, relating to the authority of federal agents.

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

**SECTION 1. AMENDMENT.** Section 29-06-05.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **29-06-05.2. Federal law enforcement officer - Authority to make arrests.**

1. "Federal agent" means an employee of the federal bureau of investigation; the federal drug enforcement administration; the bureau of alcohol, tobacco, firearms and explosives; the homeland security investigations unit of the department of homeland security; the bureau of Indian affairs police; or the United States customs and border protection who is authorized to arrest, with or without a warrant, any individual for a violation of the United States Code and carry a firearm in the performance of the employee's duties as a federal law enforcement officer.
2. A federal agent has the same authority and immunity as a peace officer in this state when making an arrest for a nonfederal crime if any of the following exist:
  - a. The federal agent has reasonable grounds to believe that a felony offense was committed and the individual arrested committed the offense.
  - b. The federal agent is rendering assistance to a peace officer in an emergency or at the request of the peace officer.
  - c. The federal agent is working as a part of a task force composed of North Dakota peace officers and federal law enforcement officers.
3. Any agreement entered under this section relating to reciprocal jurisdiction between a public agency and a tribal government must be made pursuant to chapter 54-40.2.

**SECTION 2. AMENDMENT.** Section 29-06-15 of the North Dakota Century Code is amended and reenacted as follows:

##### **29-06-15. Arrest without warrant - Peace officer - Officer in the United States customs and border protection ~~Federal agent.~~**

1. A law enforcement officer, without a warrant, may arrest a person:
  - a. For a public offense, committed or attempted in the officer's presence and for the purpose of this subdivision, a crime must be deemed committed or

- attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
- b. When the person arrested has committed a felony, although not in the officer's presence.
  - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
  - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
  - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
  - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
  - g. For the offense of violating a protection order under section 14-07.1-06, an order prohibiting contact under section 12.1-31.2-02, or for an assault involving domestic violence under section 14-07.1-11.
  - h. On a charge, made upon reasonable cause, of being under the influence of volatile chemical vapors in violation of section 19-03.1-22.1.
2. ~~An officer of the United States customs and border protection~~A federal agent, without a warrant, may arrest a person if all of the following circumstances exist:
- a. The officer is on duty.
  - b. One or more of the following situations exist:
    - (1) The person commits an assault or other crime, defined and punishable under chapter 12.1-17, against the officer or against any other person in the presence of the officer.
    - (2) The officer has reasonable cause to believe that a crime, as defined in paragraph 1, has been committed and reasonable cause to believe that the person to be arrested has committed it.
    - (3) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it.
    - (4) The officer has received positive information from an authoritative source that a peace officer holds a warrant for the person's arrest.
3. If a law enforcement officer has reasonable cause to believe an individual has violated a lawful order of a court of this state which requires the individual to participate in the twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31, the law enforcement officer may immediately take

the individual into custody without a warrant. An individual taken into custody under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate.

Approved April 25, 2019

Filed April 26, 2019



## CHAPTER 270

### SENATE BILL NO. 2068

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 1 of section 12.1-32-08 and section 29-26-22.1 of the North Dakota Century Code, relating to docketing of restitution judgments.

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

<sup>120</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court 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. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining whether to order restitution, the court shall take into account:
  - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
  - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
  - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

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<sup>120</sup> Section 12.1-32-08 was also amended by section 2 of House Bill No. 1252, chapter 117.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed without filing fee, 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. Upon thirty days' written notice to the victim's last known address, the court may order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.

**SECTION 2. AMENDMENT.** Section 29-26-22.1 of the North Dakota Century Code is amended and reenacted as follows:

**29-26-22.1. Judgment for fine ~~or~~, costs, restitution, or reparation in criminal cases - Docketing and enforcement.**

The court ~~may~~, within ten years of the date of entry of a judgment that imposes a fine, imposes a requirement that restitution or reparation be paid, or assesses costs against a defendant, may order the judgment to be docketed by the clerk of court in the judgment docket maintained pursuant to section 28-20-13 in the same manner in which a civil judgment for money is docketed. The docketing of the judgment has the same effect as the docketing of a civil judgment. The docketed judgment may be docketed in any other county in the same manner, it imposes a lien upon the real property owned by the defendant to the same extent, it is subject to the same statute of limitations, and it is enforceable by execution in the same manner as provided for a civil judgment for money. The court may direct a judgment be entered in favor of a person to whom restitution or reparation is ordered to be paid. That person may enforce the judgment as a civil judgment.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 271

### HOUSE BILL NO. 1444

(Representative Dockter)

AN ACT to amend and reenact section 29-26-22.2 of the North Dakota Century Code, relating to the authority of the county commission to compromise and settle debt obligations.

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

**SECTION 1. AMENDMENT.** Section 29-26-22.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **29-26-22.2. Authority to compromise judgment by county commissioners.**

The

1. If, after a lapse of two years from the filing of a judgment, the board of county commissioners determines the judgment cannot be collected in full, the board of county commissioners has authority to may compromise and settle any judgment for fines or costs arising from criminal proceedings which are payable to the county treasury after a lapse of two years from the filing thereof, if in the opinion of said board said judgment cannot be collected in fullstate treasurer.
2. The county's compromise or settlement may include a request to the district court to convert any amount still owed to a civil judgment.
3. Upon receipt of a certified copy of the board's action, the state's attorney of saidthe county where the judgment was filed shall in accordance therewith make and file a partial or total satisfaction of saidthe judgment as attorney for the county.
4. In the absence of a compromise or settlement, or after one year has passed following the date of a compromise or settlement, the county may contract with a private debt collection company to collect any remaining balance. The county shall deposit any additional revenue collected under this subsection in the county general fund.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 272

### SENATE BILL NO. 2272

(Senators Unruh, Grabinger, Osland)  
(Representatives Roers Jones, Schneider)

AN ACT to create and enact chapter 29-29.6 of the North Dakota Century Code, relating to the issuance of a tracking warrant for location information.

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

**SECTION 1.** Chapter 29-29.6 of the North Dakota Century Code is created and enacted as follows:

##### **29-29.6-01. Definitions.**

As used in this chapter:

1. "Electronic communication service" has the meaning given in subsection 2 of section 29-29.3-01.
2. "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.
3. "Government entity" means a state or local agency, including a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission or an individual acting or purporting to act for or on behalf of a state or local agency.
4. "Location information" means information concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device. This information could include historical cell site location information, real time cell site location information, or any cell site location information from a specific period of time.
5. "Location information service" means the provision of a global positioning service or other mapping, locational, or directional information service.
6. "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communication system.
7. "Tracking warrant" means an order in writing, in the name of the state, signed by a court directed to a peace officer, granting the officer access to location information of an electronic device.

##### **29-29.6-02. Tracking warrant required for location information.**

1. Except as provided in subsection 2, a government entity may not obtain the location information of an electronic device without a tracking warrant. A warrant granting access to location information must be issued only if the

government entity shows that there is probable cause the person who possesses an electronic device is committing, has committed, or is about to commit a crime. An application for a warrant must be made in writing and include:

- a. The identity of the government entity's peace officer making the application, and the officer authorizing the application; and
  - b. A statement of the facts and circumstances relied on by the applicant to justify the applicant's belief that a warrant should be issued, including:
    - (1) Details as to the particular offense that has been, is being, or is about to be committed; and
    - (2) The identity of the person, if known, committing the offense whose location information is to be obtained.
2. A government entity may obtain location information without a tracking warrant:
- a. When the electronic device is reported lost or stolen by the owner;
  - b. In order to respond to the user's call for emergency services;
  - c. With the informed, affirmative, documented consent of the owner or user of the electronic device;
  - d. With the informed, affirmative consent of the legal guardian or next of kin of the owner or user if the owner or user is believed to be deceased or reported missing and unable to be contacted; or
  - e. In an emergency situation that involves injury or death to a person who possesses an electronic communications device pursuant to section 8-10-11.

### **29-29.6-03. Time period and extensions.**

1. A tracking warrant issued under this section must authorize the collection of location information for a period not to exceed sixty days, or the period of time necessary to achieve the objective of the authorization, whichever is less.
2. Extensions of a tracking warrant may be granted, but only upon an application for an order and upon the judicial finding required by subdivision b of subsection 1 of section 29-29.6-02. The period of extension must be for a period not to exceed sixty days, or the period of time necessary to achieve the objective for which it is granted, whichever is less.
3. Subsections 1 and 2 apply only to tracking warrants issued for the contemporaneous collection of electronic device location information.

### **29-29.6-04. Notice - Temporary nondisclosure of tracking warrant.**

1. Within a reasonable time, but not later than ninety days after the court unseals the tracking warrant under this section, the issuing or denying judge shall cause to be served on the persons named in the warrant and the application an inventory which shall include notice of:

- a. The fact of the issuance of the warrant or the application;
  - b. The date of the issuance and the period of authorized, approved, or disapproved collection of location information, or the denial of the application; and
  - c. The fact that during the period location information was or was not collected.
2. A tracking warrant authorizing collection of location information must direct that:
    - a. The warrant be sealed for a period of ninety days; and
    - b. The warrant be filed with the court administrator within ten days of the expiration of the warrant.
  3. The prosecutor may request that the tracking warrant, supporting affidavits, and any order granting the request not be filed. An order must be issued granting the request in whole or in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable grounds exist to believe that filing the warrant may cause the search or a related search to be unsuccessful, create a substantial risk of injury to an innocent person, or severely hamper an ongoing investigation.
  4. The tracking warrant must direct that following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, the supporting application or affidavit must be filed either immediately or at any other time as the court directs. Until such filing, the documents and materials ordered withheld from filing must be retained by the judge or the judge's designee.

Approved March 14, 2019

Filed March 14, 2019

# UNIFORM PROBATE CODE

## CHAPTER 273

### SENATE BILL NO. 2070

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 1 of section 30.1-13-03 of the North Dakota Century Code, relating to priority among persons seeking appointment as personal representative.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 30.1-13-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:
  - a. The person with priority as determined by a probated will, including a person nominated by a power conferred in a will.
  - b. The surviving spouse of the decedent who is a devisee of the decedent.
  - c. Other devisees of the decedent.
  - d. The surviving spouse of the decedent.
  - e. Other heirs of the decedent.
  - f. The guardian or conservator of the decedent at the time of the decedent's death.
  - f.g. A trust company.
  - g.h. Forty-five days after the death of the decedent, any creditor.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 274

### SENATE BILL NO. 2072

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact sections 30.1-27-01, 30.1-27-02, 30.1-27-05, 30.1-27-06, 30.1-27-07, 30.1-27-08, 30.1-27-09, and 30.1-27-11 of the North Dakota Century Code, relating to guardianship of minors; and to repeal sections 30.1-27-03, 30.1-27-04, 30.1-27-10, and 30.1-27-12 of the North Dakota Century Code, relating to guardianships of minors.

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

**SECTION 1. AMENDMENT.** Section 30.1-27-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **30.1-27-01. (5-201) Status of guardian of minor - General.**

A person becomes a guardian of a minor under this chapter by acceptance of a testamentary appointment ~~or upon appointment and approval~~ by the court. The guardianship status continues until terminated, without regard to the location ~~from time to time~~ of the guardian and minor ward.

**SECTION 2. AMENDMENT.** Section 30.1-27-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **30.1-27-02. (5-202) Testamentary appointment of guardian of minor.**

The parent of a minor may appoint by will a guardian of an unmarried minor. ~~Subject to the right of the minor under section 30.1-27-03, a~~ testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated and remains effective upon approval by the court either after or without a hearing, if, before acceptance, both parents are dead or the surviving parent is ~~adjudged incapacitated~~ parent's rights have been terminated by prior court order. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile and upon approval by the court either after or without a hearing. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having the minor's care or to the minor's nearest adult ~~relation~~ relative under section 27-20-02. Within forty-five days of the filing of acceptance, the testamentary guardian must file with the court a criminal history record check report and affidavit stating whether the proposed guardian has been investigated for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or child and shall provide a release authorizing access to any record information maintained by an agency in this or another state or a federal agency.

**SECTION 3. AMENDMENT.** Section 30.1-27-05 of the North Dakota Century Code is amended and reenacted as follows:



**~~30.1-27-05. (5-205) Court appointment of guardian of minor - Venue~~Jurisdiction and venue.**

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present

1. The district court where the will is probated has exclusive jurisdiction over the following procedures that are governed by this chapter:
  - a. To approve the acceptance of a testamentary appointment of a guardian; and
  - b. To transfer a case to juvenile court in the event of an objection to the testamentary appointment under section 30.1-27-07.
2. The juvenile court under chapter 27-20.1 has exclusive original jurisdiction over proceedings to consider objections to the testamentary appointment under section 30.1-27-07 and over the court appointment of a guardian of a minor. Any person interested in the welfare of a minor may petition the juvenile court for the appointment of a guardian under section 27-20.1-05 in the following situations:
  - a. If there is a living parent of the minor, known or unknown;
  - b. If the testamentary guardian fails to accept appointment as guardian within sixty days after the death of the minor's last living parent;
  - c. If both parents are dead or the surviving parent's rights have been terminated by prior court order, but there has been no appointment of a guardian for the minor by will; or
  - d. If a guardianship of a minor is sought for any other reason.

**SECTION 4. AMENDMENT.** Section 30.1-27-06 of the North Dakota Century Code is amended and reenacted as follows:

**~~30.1-27-06. (5-206) Court appointment of guardian of minor ad litem - Qualifications - Priority of minor's nominee~~Approval of acceptance of testamentary appointment.**

The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor

1. Upon the filing of an acceptance of a testamentary appointment, the court shall appoint a guardian ad litem promptly. The guardian ad litem fees must be paid from the estate of the deceased parent, if available.
2. The duties of the guardian ad litem include:
  - a. Personally interviewing the minor, the testamentary guardian, and other persons interested in the welfare of the minor;
  - b. Explaining the guardianship proceeding to the minor in the language, mode of communication, and terms that the minor is most likely to

- understand, including the nature and consequences of the proceeding, the rights to which the minor is entitled, and the available legal options, including the right to retain an attorney to represent the minor;
- c. Advocating for the best interests of the minor consistent with section 14-09-06.2. The appointed guardian ad litem may not represent the minor in a legal capacity;
  - d. Consulting juvenile court and other agency records to determine whether the testamentary guardian has a criminal history of abuse, neglect, exploitation, and review of the criminal history records. The guardian ad litem may access confidential juvenile court records and other confidential agency records in the exercise of the guardian ad litem's official duties;
  - e. Submitting a written report to the court within sixty days of the guardian ad litem's appointment containing the guardian ad litem's findings on whether the appointment of the testamentary guardian is in the best interests of the child;
  - f. Notifying the court if the minor objects to the appointment of the testamentary guardian; and
  - g. If the guardian ad litem's report states the guardian ad litem believes the appointment of the testamentary guardian is contrary to the best interests of the minor, the case must be transferred to juvenile court.
3. The guardian ad litem shall serve a copy of the report on the minor if the minor is fourteen years of age or older, the testamentary guardian, the person having the minor's care or the minor's nearest adult relative under section 27-20-02, and the personal representative of the deceased parent's estate.
  4. After reviewing the guardian ad litem's report, the court may approve the acceptance of the testamentary appointment without a hearing if no objection is raised by the minor, the guardian ad litem, or any other person within fourteen days of the filing of the report of the guardian ad litem.
  5. The appointment of the guardian ad litem terminates immediately after the approval of the acceptance or upon transfer of the case to juvenile court.
  6. Upon the court's approval of the guardian's acceptance of the appointment, the court shall issue letters of guardianship. The letters of guardianship must include:
    - a. The name, address, and telephone number of the guardian;
    - b. The full name of the minor;
    - c. Any limitations on the guardian's authority to make decisions on behalf of the minor;
    - d. The expiration date of the appointment; and
    - e. The date by which the guardian must file the annual report required under section 27-20.1-15.

7. A written report prepared and submitted under this section is closed to the public and is not open to inspection except by the court, parties to the proceeding or the parties' counsel, other persons for those purposes as the court may order for good cause, and others authorized by court rule.
8. Medical, psychological, or other treatment information protected by federal law or regulation and any financial account numbers related to a child are confidential and may not be disclosed except to parties to the proceeding, their counsel, and others authorized by court rule. The court may permit access by other persons for good cause.

**SECTION 5. AMENDMENT.** Section 30.1-27-07 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-27-07. (5-207) Court Objection to the appointment of the testamentary guardian of minor - Procedure.**

1. ~~Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 30.1-03-01 to:~~
  - a. ~~The minor, if the minor is fourteen or more years of age.~~
  - b. ~~The person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition.~~
  - c. ~~Any living parent of the minor.~~
2. ~~Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 30.1-27-04 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.~~
3. ~~If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months.~~
4. ~~If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.~~
1. Any person interested in the welfare of a minor subject to a testamentary appointment of a guardian, including the minor, may object to the appointment of the testamentary guardian as contrary to the best interests of the minor within fourteen days of the filing of the report of the guardian ad litem.
2. An objection must contain a statement alleging specific facts that demonstrate the appointment of the testamentary guardian is contrary to the best interests of the minor.
3. Upon filing of the objection or on the court's own motion, the court immediately shall transfer the case to the juvenile court in the county where the original probate matter was filed.

**SECTION 6. AMENDMENT.** Section 30.1-27-08 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-27-08. (5-208) ~~Consent to service by acceptance~~Acceptance of appointment –~~Notice.~~**

~~By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to the guardian by ordinary mail at the guardian's address as listed in the court records and to the guardian's address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order.~~

**SECTION 7. AMENDMENT.** Section 30.1-27-09 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-27-09. (5-209) Powers and duties of guardian of minor.**

~~A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:~~

- ~~1. The guardian must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.~~
- ~~2. The guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of section 30.1-26-03. Any sums so received shall be applied to the ward's current needs for support, care, and education. The guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.~~
- ~~3. The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the ward.~~
- ~~4. A guardian shall file an annual report with the court informing the court of the status or condition of the ward and provide a copy of the report to the ward. The report must include changes that have occurred since the previous reporting period and an accounting of the ward's estate. The guardian shall~~

~~report whether the ward has resided in an institution, whether the ward continues to require guardianship, and whether any powers of the guardian should be increased or limited. The filing of a report and its acceptance by the court or clerk of district court does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The court may approve a report and allow and settle an accounting only upon notice to the ward's guardian ad litem and other interested persons who have made an appearance or requested notice of proceedings. The office of state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet website~~

The powers and duties of a guardian of a minor under this chapter are defined under section 27-20.1-15.

**SECTION 8. AMENDMENT.** Section 30.1-27-11 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-27-11. (5-211) Proceedings subsequent to appointment approval or findings - Venue Transfer to juvenile court.**

- ~~1. The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.~~Upon approval of the guardian's acceptance of the appointment of the guardian of a minor and issuance of the letters of guardianship, the court shall transfer the guardianship file to the juvenile court where the minor resides.
- ~~2. If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.~~The juvenile court under section 27-20.1-02 has exclusive jurisdiction for any filings or proceedings subsequent to approval and issuance of the letters of guardianship.

**SECTION 9. REPEAL.** Sections 30.1-27-03, 30.1-27-04, 30.1-27-10, and 30.1-27-12 of the North Dakota Century Code are repealed.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 275

### HOUSE BILL NO. 1271

(Representatives Klemin, Roers Jones)  
(Senator Dwyer)

AN ACT to amend and reenact subsection 6 of section 11-18-02.2 and section 30.1-32.1-06 of the North Dakota Century Code, relating to statements of full consideration being filed with the county recorder and transfer on death deed requirements.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 11-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

6. This section does not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:
  - a. Property owned or used by public utilities.
  - b. Property classified as personal property.
  - c. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.
  - d. A sale that resulted as a settlement of an estate.
  - e. All forced sales, mortgage foreclosures, and tax sales.
  - f. All sales to or from religious, charitable, or nonprofit organizations.
  - g. All sales when there is an indicated change of use by the new owners.
  - h. All transfer of ownership of property for which is given a quitclaim deed.
  - i. Sales of property not assessable by law.
  - j. Agricultural lands of less than eighty acres [32.37 hectares].
  - k. A transfer that is pursuant to a judgment.
  - l. ~~A transfer on death deed or revocation instrument authorized under chapter 30.1-32.1.~~

**SECTION 2. AMENDMENT.** Section 30.1-32.1-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **30.1-32.1-06. Requirements.**

1. A transfer on death deed except as otherwise provided in subsection 2 must contain the essential elements and formalities of a properly recordable inter vivos deed.
2. A transfer on death deed must state that the transfer to the designated beneficiary is to occur at the transferor's death.
3. A transfer on death deed must use the phrase "transfer on death deed" or the abbreviation "TOD" in the title of the deed.
4. A transfer on death deed must be recorded before the transferor's death in the public records in the office of the county recorder of the county where the property is located.
5. An auditor's certificate of transfer under section 11-18-02 and a statement of full consideration under section 11-18-02.2 are not required to record a transfer on death deed or a revocation instrument.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 276

### HOUSE BILL NO. 1378

(Representatives Magrum, Karls, K. Koppelman, Laning, J. Nelson, Rohr, Satrom)  
(Senators Dever, Dotzenrod, Heckaman, Hogan, Krebsbach)

AN ACT to create and enact a new chapter to title 30.1 of the North Dakota Century Code, relating to supported decisionmaking, a process for making well-informed, voluntary decisions by methods less restrictive than guardianship or conservatorship.

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

**SECTION 1.** A new chapter to title 30.1 of the North Dakota Century Code is created and enacted as follows:

##### Definitions.

As used in this chapter:

1. "Intentional misconduct" means conduct by a supporter with actual knowledge at the time of the conduct that the conduct is unnecessarily harmful to the health or well-being of a named individual.
2. "Named individual" is the individual identified in a supported decisionmaking agreement who is to receive decisionmaking assistance.
3. "Supported decisionmaking" means assistance from a person of a named individual's choosing:
  - a. To identify, collect, and organize documents that apply to a decision the named individual is considering;
  - b. To identify, collect, and organize information that may be helpful to the named individual when making a decision;
  - c. To help the named individual understand documents;
  - d. To identify choices available for a responsible decision;
  - e. To identify advantages and disadvantages of available choices;
  - f. To communicate any decision by the named individual to others at the request of the named individual; or
  - g. To explain the decisionmaking process allowed under this subsection to the court in any proceeding to create or modify a guardianship or conservatorship for the named individual.
4. "Supported decisionmaking agreement" means a written, signed, dated, and witnessed understanding between a named individual and a trusted adult who agrees to provide assistance for decisionmaking to maximize the named



individual's ability to make informed, voluntary choices, including choices within:

- a. Health care.
- b. Residence.
- c. Finances.
- d. Education.
- e. Legal affairs.
- f. Vocation.

5. "Supporter" is a person that has signed a supported decisionmaking agreement, agreeing to provide assistance to the named individual.

### **Confidential information.**

1. The named individual may sign separate authorizations when appropriate to allow others to disclose confidential documents, records, and information to a supporter identified in the authorization. An authorization may allow an individual to provide copies of the documents, records, and information to the supporter.
2. A supporter may obtain information about the named individual only by having written authorization that complies with the applicable federal or state law.

### **Supporter - Liability.**

A supporter is not liable to the named individual and has not engaged in professional misconduct for acts performed as a supporter in good faith unless the supporter has been recklessly or grossly negligent or has intentionally committed misconduct.

### **Formalities - Effects.**

1. It is presumed the named individual has capacity to enter a supported decisionmaking agreement. This presumption may be rebutted only by clear and convincing evidence.
2. A named individual's use of uncommon methods of communication does not affect the named individual's capacity to enter a supported decisionmaking agreement.
3. A named individual may have more than one supported decisionmaking agreement in effect at the same time. If any two of a named individual's supported decisionmaking agreements are incompatible, the more recent agreement prevails.
4. Two supported decisionmaking agreements are not incompatible solely due to enabling the named individual to get decisionmaking assistance from more than one supporter at the same time for the same decision.

5. A supported decisionmaking agreement does not prevent the named individual from:
  - a. Getting decisionmaking assistance from someone who is not a supporter in a supported decisionmaking agreement;
  - b. Making decisions independently without consulting a supporter; or
  - c. Getting access to and copies of documents and records about the named individual.
6. The existence or contents of a supported decisionmaking agreement may not be used as evidence of incapacity or incompetence.
7. A supported decisionmaking agreement does not give a supporter the ability to act as a surrogate decisionmaker. A supported decisionmaking agreement does not give a supporter the authority to sign documents on behalf of the named individual.

### **Termination.**

1. A supported decisionmaking agreement may be terminated by the named individual by giving notice to the supporter orally, in writing, through an assistive technology device, or by any other act showing a specific intent to terminate the agreement.
2. A supported decisionmaking agreement may be terminated by a supporter by providing written notice of the supporter's resignation to the named individual. If a supported decisionmaking agreement includes more than one supporter, any supporter can terminate the agreement only as to that supporter.
3. A supported decisionmaking agreement is terminated as to a specific supporter when:
  - a. A court has convicted the supporter of a crime involving abuse, neglect, or exploitation;
  - b. A restraining order has been issued by a court to protect the named individual from the supporter; or
  - c. A court has determined the supporter lacks capacity to make or communicate responsible decisions concerning residential or educational matters, medical treatment, legal affairs, or vocational, financial, or other matters affecting the health or safety of the named individual.
4. A supported decisionmaking agreement may be terminated by any additional method specified in the supported decisionmaking agreement.

### **Confidential documents, records, and information.**

A supporter may not allow unauthorized access to, use of, or disclosure of any confidential documents, records, and other information about the named individual, unless the named individual has otherwise directed.

### **Witnesses.**

1. A notary public or two qualified witnesses must verify in writing the signatures to a supported decisionmaking agreement.
2. To be a qualified witness, the witness must:
  - a. Not be a party to the agreement;
  - b. Be at least eighteen years of age;
  - c. Be competent;
  - d. Not be an employee or agent of a supporter in the agreement; and
  - e. Not be a creditor of the named individual.

**Reliance on agreement - Limitation of liability.**

1. Any third person who receives a copy of a supported decisionmaking agreement shall rely on the agreement, unless:
  - a. The third person has cause to believe the named individual is being abused, neglected, or exploited by the supporter;
  - b. The third person has actual knowledge or notice the supported decisionmaking agreement is invalid; or
  - c. The third person has actual knowledge or notice the supported decisionmaking agreement has been terminated.
2. A third person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decisionmaking agreement.
3. An entity, custodian, or organization that discloses personal information about a named individual to a supporter who has written authorization to access, collect, or obtain, or to assist a named individual to access, collect, or obtain that information, is immune from any action alleging the entity, custodian, or organization improperly or unlawfully disclosed information to the supporter unless:
  - a. The entity, custodian, or organization had actual knowledge or notice the named individual had revoked the authorization;
  - b. The entity, custodian, or organization had actual knowledge or notice the supported decisionmaking agreement is invalid; or
  - c. The entity, custodian, or organization knowingly or recklessly disclosed information beyond the scope of the authorization.
4. A third person is not protected from charges of professional misconduct and is not immune from liability for:
  - a. Acting inconsistently with the known expressed wishes of a named individual; or

- b. Failing to provide documents, records, or other information to either a named individual or a supporter who has written authorization for lawful access to or copies of the information.
- 5. A supported decisionmaking agreement does not relieve a person of legal obligations to provide services to an individual with a disability.

Approved March 19, 2019

Filed March 20, 2019

# JUDICIAL PROOF

## CHAPTER 277

### HOUSE BILL NO. 1109

(Judiciary Committee)  
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 31-15 of the North Dakota Century Code, relating to the Uniform Unsworn Domestic Declarations Act; and to amend and reenact subsection 4 of section 12.1-11-01 of the North Dakota Century Code, relating to the crime of perjury.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 12.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

4. For purposes of this section, "false statement under oath or equivalent affirmation" includes a writing made in accordance with ~~chapter~~chapters 31-14 and 31-15.

**SECTION 2.** Chapter 31-15 of the North Dakota Century Code is created and enacted as follows:

#### **31-15-01. Definitions.**

In this chapter:

1. "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.
2. "Law" includes a statute, judicial decision or order, rule of court, executive order, and administrative rule, regulation, or order.
3. "Record" means information inscribed on a tangible medium or stored in an electronic or other medium and which is retrievable in perceivable form.
4. "Sign" means with present intent to authenticate or adopt a record:
  - a. To execute or adopt a tangible symbol; or
  - b. To attach to or logically associate with the record an electronic symbol, sound, or process.
5. "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

6. "Unsworn declaration" means a declaration in a signed record not given under oath but given under penalty of perjury.

**31-15-02. Applicability.**

This chapter applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located within the boundaries of the United States.

**31-15-03. Validity of unsworn declaration.**

1. Except as otherwise provided in subsection 2, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter has the same effect as a sworn declaration.
2. This chapter does not apply to:
  - a. A deposition;
  - b. An oath of office;
  - c. An oath required to be given before a specified official other than a notary public;
  - d. A document intended for recording in the real estate records in the office of county recorder; or
  - e. An oath required by section 30.1-08-04.

**31-15-04. Required medium.**

If a law of this state requires a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

**31-15-05. Form of unsworn declaration.**

An unsworn declaration under this chapter must be substantially in the following form:

I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at  
(month) (year)

\_\_\_\_\_  
(city or other location, and state) (country)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(signature)

**31-15-06. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, or supercedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

Approved March 8, 2019

Filed March 8, 2019

# JUDICIAL REMEDIES

## CHAPTER 278

### HOUSE BILL NO. 1284

(Representative Headland)  
(Senator Wanzek)

AN ACT to create and enact section 32-16-49 of the North Dakota Century Code, relating to equitable buyouts of cotenant interests in an estate of inheritance subject to a partition; and to amend and reenact section 30.1-20-11 of the North Dakota Century Code, relating to partitions.

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

**SECTION 1. AMENDMENT.** Section 30.1-20-11 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-20-11. (3-911) Partition for purpose of distribution.**

When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the district court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the district court shall partition the property in the same manner as provided by chapter 32-16. The district court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party, except if a buyout is agreed upon pursuant to section 32-16-49.

**SECTION 2.** Section 32-16-49 of the North Dakota Century Code is created and enacted as follows:

**32-16-49. Buyouts.**

Notwithstanding any other provision of law, if the court determines property subject to a partition action under section 32-16-01 is held by two or more cotenants in which one or more cotenants have an estate of inheritance, and a sale of the property is requested by one or more cotenant or is required to avoid an inequitable partition, the court shall appoint a referee to obtain an appraisal to determine the fair market value of the property. Upon the determination of the fair market value of the property, the court shall notify all parties to the partition action of the determination and amount of the appraisal. Upon receipt of the appraisal, a cotenant may purchase all interests of cotenants requesting a sale of the property, at the appraised fair market value of the selling cotenant's fractional interest in the property. If more than one cotenant offers to purchase the interests of the cotenants requesting a sale of the property, the court shall equitably allocate the interests among the purchasing cotenants.

Approved March 21, 2019

Filed March 22, 2019



## CHAPTER 279

### SENATE BILL NO. 2205

(Senator Holmberg)

AN ACT to create and enact section 32-19-23.1 of the North Dakota Century Code, relating to abandoned property; and to amend and reenact sections 28-23-11, 32-19-18, 32-19-19, 32-19-23, and 32-19-27 of the North Dakota Century Code, relating to foreclosure of real estate.

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

**SECTION 1. AMENDMENT.** Section 28-23-11 of the North Dakota Century Code is amended and reenacted as follows:

##### **28-23-11. Purchaser's right - Sheriff's certificate.**

1. The purchaser of real property under execution is substituted for the judgment debtor and acquires all the right, title, interest, and claim of the debtor to the property. If the estate is a leasehold less than two years' unexpired term, the sale is absolute. Otherwise, the real property is subject to redemption under this title. The officer shall give to the purchaser a certificate of sale containing:
  - a. A particular description of the real property sold;
  - b. A statement of the price bid for each distinct lot or parcel;
  - c. A statement of the whole price paid;
  - d. If subject to redemption, a statement to that effect, including the applicable redemption period; and
  - e. The name of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by the advertisement.
2. The officer shall execute the certificate and acknowledge or prove the certificate as required for deeds of real property.

**SECTION 2. AMENDMENT.** Section 32-19-18 of the North Dakota Century Code is amended and reenacted as follows:

##### **32-19-18. Redemption.**

A party in a foreclosure action or the successor of a party may redeem from the foreclosure sale within sixty days after the sale, except for abandoned property as provided in section 32-19-19 and agricultural land. Agricultural land may be redeemed within three hundred sixty-five days after the filing of the summons and complaint in the office of the clerk of district court or the time of the first publication of the notice by advertisement. The final date for redemption of agricultural land may not be earlier than sixty days after the sheriff's sale. The owner of the property has a paramount right to redeem upon paying the amount bid at the sheriff's sale plus interest on that amount at the same rate as the obligation secured by the mortgage. Persons holding

subordinate liens on the property may redeem in the order of priority as determined by the order of attachment to the property. This redemption has the effect of a redemption as of the date of deposit, subject to the subsequent payment of any additional amount, if any, determined to be due as of that date.

**SECTION 3. AMENDMENT.** Section 32-19-19 of the North Dakota Century Code is amended and reenacted as follows:

**32-19-19. Injury to property restrained - Abandoned real property.**

The court, by injunction, on good cause shown, may restrain the party in possession from doing any act to the injury of real property during the existence of the lien or foreclosure of a mortgage thereon ~~on the real property~~ and until the expiration of the time allowed for redemption. If at the time of the commencement of the foreclosure action and at any time before the sheriff's sale the mortgagee, or after the sheriff's sale the holder of the sheriff's certificate of sale, reasonably believes that the property is abandoned, the mortgagee or holder of the sheriff's certificate may allege abandonment in the complaint or petition the court to determine abandonment. Alf by petition, a notice of hearing must be sent by mail to the last-known address of the mortgagor or the party entitled to possession of the real property at least ten days prior to the date of the hearing to determine abandonment. Service by mail is complete upon mailing. If the court determines that the real property is abandoned, the court may eliminate the redemption period in the foreclosure judgment or, upon petition, grant the mortgagee or holder of the sheriff's certificate immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. The court may proceed at the hearing to consider remedies to prevent waste in a foreclosure action or upon a petition for abandonment. The provisions of this section concerning abandoned real property do not apply to agricultural property as defined by section 57-02-01.

**SECTION 4. AMENDMENT.** Section 32-19-23 of the North Dakota Century Code is amended and reenacted as follows:

**32-19-23. When notice not required.**

1. If the record title to real estate is in the name of a deceased person, notice before foreclosure need not be served unless a personal representative of the estate is appointed in the county in which the real estate is situated. The certificate of the judge or clerk of the district court serving the county in which the real estate is situated stating that a personal representative has not been appointed is sufficient evidence of that fact.
2. Actual service of the notice before foreclosure is not required if the property is abandoned as provided under section 32-19-23.1, or if service by mail as provided in this chapter has been attempted three times and the attempted service is returned as refused or unclaimed.

**SECTION 5.** Section 32-19-23.1 of the North Dakota Century Code is created and enacted as follows:

**32-19-23.1. Abandoned property - Prima facie evidence.**

1. An affidavit under this section is prima facie evidence of abandonment if the affidavit is made by:
  - a. The sheriff or sheriff's deputy of the county in which the mortgaged premises is located, or of a building inspector, zoning administrator,

- housing official, or other municipal or county official having jurisdiction over the mortgaged premises, and the affidavit states the mortgaged premises are not actually occupied; or
- b. The party foreclosing a mortgage, holding a sheriff's certificate, or an agent or contractor of the party foreclosing the mortgage, and the affidavit states the affiant has changed the locks on the mortgaged premises and a party having a legal possessory right has not requested entrance to the premises for at least ten days.
2. An affidavit under this section must include at least one of the following facts:
- a. Windows or entrances to the premises are boarded or shuttered, or multiple window panes are broken;
- b. Doors to the premises are destroyed, broken, unhinged, or continuously unlocked;
- c. Gas, electric, or water service to the premises has been terminated;
- d. Rubbish, trash, or debris has accumulated on the mortgaged premises;
- e. Law enforcement has received at least two reports of trespassers, vandalism, or other illegal acts on the premises; or
- f. The premises is deteriorating and either below or in imminent danger of falling below minimum community standards for public safety and sanitation.
3. This section applies only to mortgaged property that is:
- a. Ten acres or less;
- b. Improved with a residential dwelling that consists of fewer than five units and is not a model home or under construction; and
- c. Not used in agricultural production.

**SECTION 6. AMENDMENT.** Section 32-19-27 of the North Dakota Century Code is amended and reenacted as follows:

**32-19-27. Proofs relative to notice - How made and filed.**

Proof of service of notice before foreclosure may be made by the return of a sheriff or other officer, or by affidavit of the person making personal service or mailing such notice. Proof of death of the title owner of record may be made by a certified copy of the death certificate or by affidavit of any person having knowledge of the fact. Proof of any other fact necessary to show ~~that~~ the notice was properly served, service was attempted and refused or unclaimed, or the property is abandoned may be made by certificate of a proper officer or of an abstractor or by affidavit of any person having knowledge of the facts. Such proofs together with the notice ~~shall~~must be filed with the complaint in any action for the foreclosure of a mortgage and ~~shall~~must be recorded with the notice and certificate of sale in foreclosures by advertisement.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 280

### SENATE BILL NO. 2063

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 32-29.4 of the North Dakota Century Code, relating to adoption of the Uniform Family Law Arbitration Act.

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

**SECTION 1.** Chapter 32-29.4 of the North Dakota Century Code is created and enacted as follows:

##### **32-29.4-01. Definitions.**

In this chapter:

1. "Arbitration agreement" means an agreement that subjects a family law dispute to arbitration.
2. "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration or is involved in the selection of an arbitrator.
3. "Arbitrator" means an individual selected, alone or with others, to make an award in a family law dispute that is subject to an arbitration agreement.
4. "Child-related dispute" means a family law dispute regarding parenting time, or financial support regarding a child.
5. "Court" means the district court.
6. "Family law dispute" means a contested issue arising under the domestic relations law of this state.
7. "Party" means an individual who signs an arbitration agreement and whose rights will be determined by an award.
8. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.
9. "Record", used as a noun, means information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.
10. "Sign" means, with present intent to authenticate or adopt a record:
  - a. To execute or adopt a tangible symbol; or

- b. To attach to or logically associate with the record an electronic symbol, sound, or process.
11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

**32-29.4-02. Scope.**

1. This chapter governs arbitration of a family law dispute.
2. This chapter does not authorize an arbitrator to make an award that:
  - a. Grants a legal separation, divorce, or annulment;
  - b. Terminates parental rights;
  - c. Grants an adoption or a guardianship of a child or incapacitated individual;
  - d. Determines the status of dependency; or
  - e. Determines a child-related dispute.

**32-29.4-03. Applicable law.**

1. Except as otherwise provided in this chapter, the law applicable to arbitration is chapter 32-29.3.
2. In determining the merits of a family law dispute, an arbitrator shall apply the law of this state, including its choice of law rules.

**32-29.4-04. Arbitration agreement.**

1. An arbitration agreement must:
  - a. Be in a record signed by the parties;
  - b. Identify the arbitrator, an arbitration organization, or a method of selecting an arbitrator; and
  - c. Identify the family law dispute the parties intend to arbitrate.
2. An agreement in a record to arbitrate a family law dispute that arises between the parties before, at the time, or after the agreement is made is valid and enforceable as any other contract and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.
3. If a party objects to arbitration on the ground the arbitration agreement is unenforceable or the agreement does not include a family law dispute, the court shall decide whether the agreement is enforceable or includes the family law dispute.

**32-29.4-05. Notice of arbitration.**

A party may initiate arbitration by giving notice to arbitrate to the other party in the manner specified in the arbitration agreement or, in the absence of a specified manner, under the law and procedural rules of this state other than this chapter governing contractual arbitration.

**32-29.4-06. Motion for judicial relief.**

1. A motion for judicial relief under this chapter must be made to the court in which a proceeding is pending involving a family law dispute subject to arbitration or, if no proceeding is pending, a court with jurisdiction over the parties and the subject matter.
2. On motion of a party, the court may compel arbitration if the parties have entered an arbitration agreement that complies with section 32-29.4-04 unless the court determines under section 32-29.4-11 the arbitration should not proceed.
3. On motion of a party, the court shall terminate arbitration if it determines:
  - a. The agreement to arbitrate is unenforceable;
  - b. The family law dispute is not subject to arbitration; or
  - c. Under section 32-29.4-11, the arbitration should not proceed.
4. Unless prohibited by an arbitration agreement, on motion of a party, the court may order consolidation of separate arbitrations involving the same parties and a common issue of law or fact if necessary for the fair and expeditious resolution of the family law dispute.

**32-29.4-07. Qualification and selection of arbitrator.**

1. Except as otherwise provided in subsection 2, unless waived in a record by the parties, an arbitrator must be:
  - a. An attorney in good standing admitted to practice or on inactive status or a judge on retired status in a state; and
  - b. Trained in identifying domestic violence and child abuse.
2. The identification in the arbitration agreement of an arbitrator, arbitration organization, or method of selection of the arbitrator controls.
3. If an arbitrator is unable or unwilling to act or if the agreed-on method of selecting an arbitrator fails, on motion of a party, the court shall select an arbitrator.

**32-29.4-08. Disclosure by arbitrator - Disqualification.**

1. Before agreeing to serve as an arbitrator, an individual, after making reasonable inquiry, shall disclose to all parties any known fact a reasonable person would believe is likely to affect:

- a. The impartiality of the arbitrator in the arbitration, including bias, a financial or personal interest in the outcome of the arbitration, or an existing or past relationship with a party, attorney representing a party, or witness; or
  - b. The arbitrator's ability to make a timely award.
2. An arbitrator, the parties, and the attorneys representing the parties have a continuing obligation to disclose to all parties any known fact a reasonable person would believe is likely to affect the impartiality of the arbitrator or the arbitrator's ability to make a timely award.
  3. An objection to the selection or continued service of an arbitrator and a motion for a stay of arbitration and disqualification of the arbitrator must be made under the law and procedural rules of this state other than this chapter governing arbitrator disqualification.
  4. If a disclosure required by subdivision a of subsection 1 or subsection 2 is not made, the court may:
    - a. On motion of a party not later than thirty days after the failure to disclose is known or by the exercise of reasonable care should have been known to the party, suspend the arbitration;
    - b. On timely motion of a party, vacate an award under subdivision b of subsection 1 of section 32-29.4-18; or
    - c. If an award has been confirmed, grant other appropriate relief under law of this state other than this chapter.
  5. If the parties agree to discharge an arbitrator or the arbitrator is disqualified, the parties by agreement may select a new arbitrator or request the court to select another arbitrator as provided in section 32-29.4-07.

### **32-29.4-09. Party participation.**

1. A party may:
  - a. Be represented in an arbitration by an attorney;
  - b. Be accompanied by an individual who will not be called as a witness or act as an advocate; and
  - c. Participate in the arbitration to the full extent permitted under the law and procedural rules of this state other than this chapter governing a party's participation in contractual arbitration.
2. A party or representative of a party may not communicate ex parte with the arbitrator except to the extent allowed in a family law proceeding for communication with a judge.

### **32-29.4-10. Temporary order or award.**

1. Before an arbitrator is selected and able to act, on motion of a party, the court may enter a temporary order in accordance with rule 8.2 of the North Dakota Rules of Court.

2. After an arbitrator is selected:
  - a. The arbitrator may make a temporary award in accordance with rule 8.2 of the North Dakota Rules of Court; and
  - b. If the matter is urgent and the arbitrator is not able to act in a timely manner or provide an adequate remedy, on motion of a party, the court may enter a temporary order.
3. On motion of a party, before the court confirms a final award, the court under section 32-29.4-15, 32-29.4-17, or 32-29.4-18 may confirm, correct, vacate, or amend a temporary award made under subdivision a of subsection 2.
4. On motion of a party, the court may enforce a subpoena or interim award issued by an arbitrator for the fair and expeditious disposition of the arbitration.

### **32-29.4-11. Protection of party or child.**

1. In this section, "protection order" means an injunction or other order, issued under the domestic violence, family violence, or stalking laws of the issuing jurisdiction, to prevent an individual from engaging in a violent or threatening act against, harassment of, contact or communication with, or being in physical proximity to another individual who is a party or a child under the custodial responsibility of a party.
2. If a party is subject to a protection order or an arbitrator determines there is a reasonable basis to believe a party's safety or ability to participate effectively in arbitration is at risk, the arbitrator shall stay the arbitration and refer the parties to court. The arbitration may not proceed unless the party at risk affirms the arbitration agreement in a record and the court determines:
  - a. The affirmation is informed and voluntary;
  - b. Arbitration is not inconsistent with the protection order; and
  - c. Reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation.
3. An arbitrator may make a temporary award to protect a party or child from harm, harassment, or intimidation.
4. On motion of a party, the court may stay arbitration and review a determination or temporary award under this section.
5. This section supplements remedies available under law of this state other than this chapter for the protection of victims of domestic violence, family violence, stalking, harassment, or similar abuse.

### **32-29.4-12. Powers and duties of arbitrator.**

1. An arbitrator shall conduct an arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the dispute.
2. An arbitrator shall provide each party a right to be heard, to present evidence material to the family law dispute, and to cross-examine witnesses.



3. Unless the parties otherwise agree in a record, an arbitrator's powers include the power to:
  - a. Select the rules for conducting the arbitration;
  - b. Hold conferences with the parties before a hearing;
  - c. Determine the date, time, and place of a hearing;
  - d. Require a party to provide:
    - (1) A copy of a relevant court order;
    - (2) Information required to be disclosed in a family law proceeding under law of this state other than this chapter; and
    - (3) A proposed award that addresses each issue in arbitration;
  - e. Appoint a private expert at the expense of the parties;
  - f. Administer an oath or affirmation and issue a subpoena for the attendance of a witness or the production of documents and other evidence at a hearing;
  - g. Compel discovery concerning the family law dispute and determine the date, time, and place of discovery;
  - h. Determine the admissibility and weight of evidence;
    - i. Permit deposition of a witness for use as evidence at a hearing;
    - j. For good cause, prohibit a party from disclosing information;
    - k. Impose a procedure to protect a party or child from risk of harm, harassment, or intimidation;
    - l. Allocate arbitration fees, attorney's fees, expert-witness fees, and other costs to the parties; and
  - m. Impose a sanction on a party for bad faith or misconduct during the arbitration according to standards governing imposition of a sanction for litigant misconduct in a family law proceeding.
4. An arbitrator may not allow ex parte communication except to the extent allowed in a family law proceeding for communication with a judge.

#### **32-29.4-13. Recording of hearing.**

Except as otherwise required by law of this state other than this chapter, an arbitration hearing need not be recorded unless required by the arbitrator, provided by the arbitration agreement, or requested by a party.

#### **32-29.4-14. Award.**

1. An arbitrator shall make an award in a record, dated and signed by the arbitrator. The arbitrator shall give notice of the award to each party by a

method agreed on by the parties or, if the parties have not agreed on a method, under the law and procedural rules of this state other than this chapter governing notice in contractual arbitration.

2. The award under this chapter must state the reasons on which it is based unless otherwise agreed by the parties.
3. An award under this chapter is not enforceable as a judgment until confirmed under section 32-29.4-15.

### **32-29.4-15. Confirmation of award.**

1. After an arbitrator gives notice under subsection 1 of section 32-29.4-14 of an award, including an award corrected under section 32-29.4-16, a party may move the court for an order confirming the award.
2. The court shall confirm an award under this chapter if:
  - a. The parties agree in a record to confirmation; or
  - b. The time has expired for making a motion, and no motion is pending, under section 32-29.4-17 or 32-29.4-18.
3. On confirmation, an award under this chapter is enforceable as a judgment.

### **32-29.4-16. Correction by arbitrator of unconfirmed award.**

On motion of a party made not later than thirty days after an arbitrator gives notice under subsection 1 of section 32-29.4-14 of an award, the arbitrator may correct the award:

1. If the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;
2. If the award is imperfect in a matter of form not affecting the merits on the issues submitted; or
3. To clarify the award.

### **32-29.4-17. Correction by court of unconfirmed award.**

1. On motion of a party made not later than ninety days after an arbitrator gives notice under subsection 1 of section 32-29.4-14 of an award, including an award corrected under section 32-29.4-16, the court shall correct the award if:
  - a. The award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;
  - b. The award is imperfect in a matter of form not affecting the merits of the issues submitted; or
  - c. The arbitrator made an award on a dispute not submitted to the arbitrator and the award may be corrected without affecting the merits of the issues submitted.

2. A motion under this section to correct an award may be joined with a motion to vacate or amend the award under section 32-29.4-18.
3. Unless a motion under section 32-29.4-18 is pending, the court may confirm a corrected award under section 32-29.4-15.

**32-29.4-18. Vacation or amendment by court of unconfirmed award.**

1. On motion of a party, the court shall vacate an unconfirmed award if the moving party establishes that:
  - a. The award was procured by corruption, fraud, or other undue means:
  - b. There was:
    - (1) Evident partiality by the arbitrator;
    - (2) Corruption by the arbitrator; or
    - (3) Misconduct by the arbitrator substantially prejudicing the rights of a party;
  - c. The arbitrator refused to postpone a hearing on showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 32-29.4-12, so as to prejudice substantially the rights of a party;
  - d. The arbitrator exceeded the arbitrator's powers;
  - e. No arbitration agreement exists, unless the moving party participated in the arbitration without making a motion under section 32-29.4-06 not later than the beginning of the first arbitration hearing; or
  - f. The arbitration was conducted without proper notice under section 32-29.4-05 of the initiation of arbitration, so as to prejudice substantially the rights of a party.
2. A motion under this section to vacate or amend an award must be filed not later than ninety days:
  - a. After an arbitrator gives the party filing the motion notice of the award or a corrected award; or
  - b. For a motion under subdivision a of subsection 1, after the ground of corruption, fraud, or other undue means is known or by the exercise of reasonable care should have been known to the party filing the motion.
3. If the court under this section vacates an award for a reason other than the absence of an enforceable arbitration agreement, the court may order a rehearing before an arbitrator. If the reason for vacating the award is the award was procured by corruption, fraud, or other undue means or there was evident partiality, corruption, or misconduct by the arbitrator, the rehearing must be before another arbitrator.

4. If the court under this section denies a motion to vacate or amend an award, the court may confirm the award under section 32-29.4-15 unless a motion is pending under section 32-29.4-17.

#### **32-29.4-19. Clarification of confirmed award.**

If the meaning or effect of an award confirmed under section 32-29.4-15 is in dispute, the parties may:

1. Agree to arbitrate the dispute before the original arbitrator or another arbitrator; or
2. Proceed in court under law of this state other than this chapter governing clarification of a judgment in a family law proceeding.

#### **32-29.4-20. Judgment on award.**

1. On granting an order confirming, vacating without directing a rehearing, or amending an award under this chapter, the court shall enter judgment in conformity with the order.
2. On motion of a party, the court may order a document or part of the arbitration record be sealed or redacted to prevent public disclosure of all or part of the record or award to the extent permitted under law of this state other than this chapter.

#### **32-29.4-21. Modification of confirmed award or judgment.**

If a party requests under law of this state other than this chapter a modification of an award confirmed under section 32-29.4-15 or judgment on the award based on a fact occurring after confirmation:

1. The parties shall proceed under the dispute-resolution method specified in the award or judgment; or
2. If the award or judgment does not specify a dispute-resolution method, the parties may:
  - a. Agree to arbitrate the modification before the original arbitrator or another arbitrator; or
  - b. Absent agreement proceed under law of this state other than this chapter governing modification of a judgment in a family law proceeding.

#### **32-29.4-22. Enforcement of confirmed award.**

1. The court shall enforce an award confirmed under section 32-29.4-15, including a temporary award, in the manner and to the same extent as any other order or judgment of a court.
2. The court shall enforce an arbitration award in a family law dispute confirmed by a court in another state in the manner and to the same extent as any other order or judgment from another state.

#### **32-29.4-23. Appeal.**

1. An appeal may be taken under this chapter from:

- a. An order granting or denying a motion to compel arbitration;
  - b. An order granting or denying a motion to stay arbitration;
  - c. An order confirming or denying confirmation of an award;
  - d. An order correcting an award;
  - e. An order vacating an award without directing a rehearing; or
  - f. A final judgment.
2. An appeal under this section may be taken as from an order or a judgment in a civil action.

### **32-29.4-24. Immunity of arbitrator.**

1. An arbitrator or arbitration organization acting in that capacity in a family law dispute is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.
2. The immunity provided by this section supplements any immunity under law of this state other than this chapter.
3. An arbitrator's failure to make a disclosure required by section 32-29.4-08 does not cause the arbitrator to lose immunity under this section.
4. An arbitrator is not competent to testify, and may not be required to produce records, in a judicial, administrative, or similar proceeding about a statement, conduct, decision, or ruling occurring during an arbitration, to the same extent as a judge of a court of this state acting in a judicial capacity. This section does not apply:
  - a. To the extent disclosure is necessary to determine a claim by the arbitrator or arbitration organization against a party to the arbitration; or
  - b. To a hearing on a motion under subdivision a or b of subsection 1 of section 32-29.4-18 to vacate an award, if there is prima facie evidence a ground for vacating the award exists.
5. If a person commences a civil action against an arbitrator arising from the services of the arbitrator or seeks to compel the arbitrator to testify or produce records in violation of subsection 4 and the court determines the arbitrator is immune from civil liability or is not competent to testify or required to produce the records, the court shall award the arbitrator reasonable attorney's fees, costs, and reasonable expenses of litigation.

### **32-29.4-25. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 114 Stat. 464; 15 U.S.C. 7001 et seq.], but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**32-29.4-26. Transitional provision.**

This chapter applies to arbitration of a family law dispute under an arbitration agreement made after July 31, 2019. If an arbitration agreement was made before August 1, 2019, the parties may agree in a record this chapter applies to the arbitration.

Approved March 14, 2019

Filed March 14, 2019

# LABOR AND EMPLOYMENT

## CHAPTER 281

### HOUSE BILL NO. 1193

(Representatives Johnston, Becker, Devlin, B. Koppelman, Lefor, Marschall, D. Ruby, Schatz)  
(Senators Kreun, O. Larsen, J. Roers, Sorvaag)

AN ACT to create and enact a new section to chapter 34-06 of the North Dakota Century Code, relating to a living wage mandate prohibition for political subdivisions; and to provide for application.

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

**SECTION 1.** A new section to chapter 34-06 of the North Dakota Century Code is created and enacted as follows:

##### **Living wage mandate prohibition - Political subdivisions.**

1. As used in this section:
  - a. "Employ" has the same meaning as provided under section 34-06.1-02.
  - b. "Employer" includes a person acting directly or indirectly in the interest of an employer in relation to an employee. The term may include a public agency, other than the federal government, and an employer that has a contract or subcontract with a political subdivision or that has received tax abatements, loan guarantees, or other financial assistance from the political subdivision.
  - c. "Living wage mandate" means a requirement enacted by a political subdivision which requires an employer to pay any or all of the employees of the employer a wage rate not otherwise required under the law of this state or federal law.
  - d. "Political subdivision" includes a city, county, township, school district, or any other local government of this state.
2. A political subdivision may not enact, maintain, or enforce by charter, ordinance, purchase agreement, contract, regulation, rule, or resolution a living wage mandate in an amount greater than the applicable minimum wage rate of this state.

**SECTION 2. APPLICATION.** This Act applies to a living wage mandate, regardless of whether enacted before or after the effective date of this Act.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 282

### SENATE BILL NO. 2145

(Senators Klein, Hogue, Robinson)  
(Representatives Keiser, Lefor, Roers Jones)

AN ACT to amend and reenact sections 34-14-05 and 34-14-09 of the North Dakota Century Code, relating to investigation of wage collection claims; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 34-14-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **34-14-05. Enforcement.**

It is the duty of the

1. The labor commissioner or the commissioner's deputy shall ensure compliance with the provisions of this chapter, to investigate as to any alleged violations of this chapter, and to institute or cause to be instituted actions for penalties and forfeitures provided hereunder related to violation of this chapter.
2. The commissioner or the commissioner's deputy may hold hearings on the merits of any claim and shall cooperate with any employee in the enforcement of a claim against the employee's employer in any case ~~whenever~~if, in the commissioner's opinion, the claim is valid.
3. In investigating a complaint under this chapter, the commissioner may require the attendance of a witness and the production of a book, record, document, data, or other object at any hearing or with reference to any matter the commissioner has the authority to investigate under this chapter.
  - a. If under this subsection a witness fails or refuses to appear or to produce, the commissioner may issue a subpoena to compel the witness to appear or a subpoena duces tecum to compel the witness to appear and produce a relevant book, record, document, data, or other object.
  - b. If a person refuses to obey a subpoena, the district court, upon application by the commissioner, may issue to the person an order requiring the person to appear and give evidence or otherwise produce documentary evidence requested by the commissioner regarding the matter under investigation.
  - c. A witness subpoenaed under this section who appears at a hearing or has a deposition taken is entitled to receive the same fees and mileage as a witness in a civil case in district court.
4. The commissioner may consider any offsets, deductions, or counterclaims asserted by an employer during the commissioner's investigation and determination of the validity, enforceability, and amount of any claim for



wages. An employer ~~must~~shall disclose the basis for and the amount of any claimed offset, deduction, or counterclaim to the commissioner within the time the commissioner directs.

5. The commissioner and the commissioner's authorized representatives have the right to enter places of employment for the purpose of inspecting records and seeing that all provisions of this chapter are complied with.

**SECTION 2. 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. (Effective through June 30, 2019)**

1. An employee may file with the department a claim for wages due under this chapter or under chapter 34-06 if the filing is made within two years from the date the wages are due and the amount of the wages claimed due is at least one hundred twenty-five dollars but not more than fifteen thousand dollars. For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. If the department denies the claim for wages due because the amount claimed is less than one hundred twenty-five dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in small claims court under chapter 27-08.1. If the department denies the claim for wages due because the amount claimed is more than fifteen thousand dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in district court under chapter 27-05.
2. If the labor commissioner determines wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.
3. 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.

~~**Employees' remedies – Limitation on wages collectible. (Effective after June 30, 2019)** An employee may file a claim for wages due under this chapter or under chapter 34-06 with the department not later than two years from the date the wages are due. For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. Whenever the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or 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 assignments and may bring any legal action necessary to collect 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~~

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~~the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.~~

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective July 1, 2019.

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

Approved March 6, 2019

Filed March 7, 2019

# LIENS

## CHAPTER 283

### HOUSE BILL NO. 1312

(Representatives Jones, Damschen, Fegley, Hatlestad, Kasper, Laning, Longmuir,  
Steiner)  
(Senators Kannianen, Klein, J. Roers, Unruh)

AN ACT to amend and reenact section 35-24-01 of the North Dakota Century Code, relating to definitions pertaining to a well or pipeline construction lien.

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

**SECTION 1. AMENDMENT.** Section 35-24-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **35-24-01. Definitions.**

In this chapter unless the context or subject matter otherwise requires:

1. "Construction" means construction, maintenance, operation, or repair.
2. "Contract" means a contract, written or oral, express or implied, or partly express and partly implied, or executory or executed, or partly executory and partly executed.
3. "Drilling" means drilling, digging, torpedoing, acidizing, cementing, completing, or repairing.
4. "Furnish" means sell or rent.
5. "Labor" means work performed in return for wages.
6. "Material" means material, machinery, equipment, appliances, buildings, structures, tools, bits, or supplies but, including gasoline, diesel fuel, propane, and lubricants. "Material" does not include rigs or hoists or their integral component parts except wire lines.
7. "Operating" means all operations in connection with or necessary to the development, production, or reclamation of oil or gas.
8. "Original contractor" means any person for whose benefit a lien is prescribed under section 35-24-02.
9. "Owner" means a person holding any interest in the legal or equitable title or both to any leasehold for oil or gas purposes, or any pipeline, or that person's agent, and includes purchasers under executory contract, receivers, and trustees.

10. "Person" means an individual, corporation, limited liability company, firm, partnership, or association.
11. "Pipeline" means any pipeline laid and designed as a means of transporting natural gas, oil, or gasoline, or their components or derivatives, and the right of way therefor.
12. "Services" means work performed exclusive of labor, including the hauling of material, whether or not involving the furnishing of material.
13. "Working interest" means interest in oil and gas that may be produced from a well but does not include royalty or overriding royalty interests.

Approved March 8, 2019

Filed March 8, 2019

# LIVESTOCK

## CHAPTER 284

### SENATE BILL NO. 2239

(Senators Erbele, Myrdal, Osland)  
(Representatives Fisher, C. Johnson, Trottier)

AN ACT to create and enact section 36-01-36 of the North Dakota Century Code, relating to animal identification program records; to amend and reenact section 36-01-32 of the North Dakota Century Code, relating to the development and maintenance of animal tracking databases; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 36-01-32 of the North Dakota Century Code is amended and reenacted as follows:

##### **36-01-32. Duties - Animal tracking.**

The board shall develop and maintain an animal tracking ~~database~~databases to assist with tracking animal movements for animal health purposes only. The information obtained and maintained in the ~~database~~databases is subject to open records laws as provided for in section ~~36-09-28~~36-01-36.

**SECTION 2.** Section 36-01-36 of the North Dakota Century Code is created and enacted as follows:

##### **36-01-36. Premises identification, animal identification, and animal tracking - Open records - Exception.**

1. The board shall maintain the confidentiality of information created, collected, or maintained by the state veterinarian for purposes of premises identification, animal identification, or animal tracking, including the name and address of the owner or lessee of the property where an animal found, is located.
2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:
  - a. Every individual who is the subject of the information provides written consent to the release of information;
  - b. The disclosure is authorized pursuant to federal law;
  - c. The disclosure is necessary to provide a state or federal agency with information to assist in animal disease control or tracing an animal disease;
  - d. The disclosure is to the attorney general or to law enforcement to assist in a criminal investigation;

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- e. A court of competent jurisdiction orders the disclosure; or
  - f. The disclosure is to provide the North Dakota stockmen's association with information pursuant to section 4.1-72-05.
3. A person violating this section is subject to the remedies set forth in section 44-04-21.2. For purposes of applying section 44-04-21.2, "public entity" includes any person that has contracted with the state for the provision of services related to a premises identification, animal identification, or animal tracking database program.

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

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 285

### SENATE BILL NO. 2177

(Senators Luick, Erbele, Myrdal, Patten)  
(Representatives D. Johnson, Trottier)

AN ACT to amend and reenact sections 36-21.2-05 and 36-21.2-06 of the North Dakota Century Code, relating to due process and accounting for animals to be seized.

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

**SECTION 1. AMENDMENT.** Section 36-21.2-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **36-21.2-05. Seizure of animal - Court order.**

1. A law enforcement officer, upon a recommendation from a licensed veterinarian approved by the board of animal health, may petition the court for an order directing the seizure of any animal believed to have been neglected, abused, treated cruelly, or subjected to any act or omission in violation of this chapter. If the animal to be seized is a bovine animal, horse, or mule, the law enforcement officer shall provide a copy of the petition to the chief brand inspector. The chief brand inspector shall conduct an ownership inspection of the animal as provided under section 36-21.2-06.
2. The court, upon a recommendation from a licensed veterinarian approved by the board of animal health, may act without notice to the animal's owner or to the person having custody or control of the animal and may rely solely on testimony or an affidavit in considering the petition.
3. In the order for seizure, the court may direct that a veterinarian humanely destroy an animal if the veterinarian, upon examining the animal, determines that the animal is experiencing excruciating pain or suffering and that the animal's pain or suffering is not likely to be alleviated using reasonable medical interventions.

**SECTION 2. AMENDMENT.** Section 36-21.2-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **36-21.2-06. Law enforcement - Duty upon seizure - Notification.**

1. Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement officer shall provide care for the animal, either directly or through a contractual arrangement with another person. For purposes of this subsection, "care" means food, water, and shelter from the elements, as appropriate for the species, the breed, and the animal's age and physical condition, and necessary medical attention.
  - a. If the owner and the person having custody or control at the time of the seizure are known to the officer or can be determined following a reasonable inquiry, the officer shall:

- (1) Provide notice of the seizure to the owner and, the person having custody or control of the animal, and, if the animal is a bovine animal, horse, or mule, to the chief brand inspector; and
  - (2) Petition the court for an order directing the animal's disposition.
- b. If the animal's owner is not known to the law enforcement officer and cannot be determined following a reasonable inquiry, the officer shall publish notice of the animal's seizure in the official newspaper of the county and indicate that if the owner does not claim the animal within five days, the animal will be sold, placed for adoption, or humanely destroyed, at the direction of the law enforcement officer. If the animal to be seized is a bovine animal, horse, or mule, the officer also shall provide notice to the chief brand inspector.
- (1) If the owner does not claim the animal within five days following publication, as required by this subdivision, the law enforcement officer shall sell the animal, place the animal for adoption, or provide for its humane destruction.
  - (2) If the owner is identified within the five-day period following publication, the law enforcement officer shall petition the court for an order directing the animal's disposition.
2. In ruling on a petition for an animal's disposition under this section, a court may direct that the animal be sold, placed for adoption, humanely destroyed, or returned to its owner, with or without conditions. If the animal subject to the disposition ruling is a bovine animal, horse, or mule, the law enforcement officer shall provide notice of the ruling to the chief brand inspector. The chief brand inspector shall conduct an ownership inspection of the animal subject to the ruling.
3. The owner of an animal, at any time before a final ruling on the animal's disposition, may request a hearing before the court. If a hearing is requested, the court may not issue a final ruling on the disposition of the animal until the conclusion of the hearing.

Approved March 6, 2019

Filed March 7, 2019



# MILITARY

## CHAPTER 286

### SENATE BILL NO. 2097

(Government and Veterans Affairs Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-01-43 and 37-03-02, subsection 8 of section 37-26-01, subsection 6 of section 37-28-02, and section 37-28-03 of the North Dakota Century Code, relating to the operation of the North Dakota national guard.

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

**SECTION 1. AMENDMENT.** Section 37-01-43 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-01-43. North Dakota military civil relief act.**

A person called or ordered to active service for thirty consecutive days or longer has all of the protections afforded to persons in the military service of the United States under the Servicemembers Civil Relief Act [50 U.S.C. sections 3901-4043] in effect on December 31, 2018.

**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, 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. Each assistant adjutant general must have had not less than ~~five~~three years' commissioned service in the North Dakota national guard immediately preceding the appointment and must have attained the rank of lieutenant colonel. Upon appointment, each assistant adjutant general must have the rank as is consistent with federal laws and regulations. The assistant adjutant general for army and the assistant adjutant general for air force have general supervision over the training of the troops and the administration of the affairs of their respective departments. 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 must have the rank as-is consistent with experience and length of service.

**SECTION 3. AMENDMENT.** Subsection 8 of section 37-26-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Veteran" means a member of the national guard or reserve component who was activated under 10 U.S.C. ~~67312301~~, in effect on December 31, 2011, or 10 U.S.C. ~~673(b)12302~~, in effect on October 28, 2004, and who completed honorable and faithful service of more than thirty days on active duty in the armed forces of the United States at any time during the period of service, who was a resident of the state of North Dakota, and who has not received bonus or adjusted compensation from another state for the period of service.

**SECTION 4. AMENDMENT.** Subsection 6 of section 37-28-02 of the North Dakota Century Code is amended and reenacted as follows:

6. "Period of service" means the period of time beginning December 5, 1992, and ending June 30, ~~2019~~2021.

**SECTION 5. AMENDMENT.** Section 37-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-03. Payment of adjusted compensation for domestic and foreign service.**

Each national guard or reserve component resident veteran mobilized stateside is entitled to fifty dollars for each month or major fraction thereof for domestic service. Each national guard, reserve, or active component resident veteran of foreign service who received the expeditionary medal or campaign badge is entitled to one hundred dollars for each month or major fraction thereof. If the veteran received a purple heart for foreign service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation related to the mobilization during which the purple heart was earned. If the veteran is deceased, the veteran's beneficiary is entitled to any payments under this chapter to which the veteran would have been entitled. Applications for adjusted compensation may be filed with the adjutant general through June 30, ~~2019~~2021, or in the case of a soldier mobilized on June 30, ~~2019~~2021, not later than six months after the end of the mobilization period of service.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 287

### HOUSE BILL NO. 1101

(Government and Veterans Affairs Committee)  
(At the request of the Adjutant General)

AN ACT to create and enact section 37-03-18 of the North Dakota Century Code, relating to the adjutant general's program supporting North Dakota national guard service members, veterans, families, and survivors, and the ability to accept funds for this purpose; to provide a continuing appropriation; and to provide for a report to the budget section.

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

**SECTION 1.** Section 37-03-18 of the North Dakota Century Code is created and enacted as follows:

**37-03-18. North Dakota national guard service member, veteran, family, and survivor support program - Administration - Continuing appropriation - Report to budget section.**

The adjutant general shall establish and operate the North Dakota national guard service member, veteran, family, and survivor support program. The adjutant general may accept and expend funds from the North Dakota national guard foundation or any similar foundation, offered or tendered, for the benefit of the North Dakota national guard service member, veteran, family, and survivor support program. There is a special fund known as the North Dakota national guard service member, veteran, family, and survivor support fund. All moneys received and accepted from the North Dakota national guard foundation or any similar foundation under this section must be deposited in the fund, and are appropriated on a continuing basis to the adjutant general to be used for the North Dakota national guard service member, veteran, family, and survivor support program. The expenditures from the fund may not exceed five hundred thousand dollars per biennium unless approved by the emergency commission and the budget section. Annually the adjutant general shall report to the budget section regarding the income and expenditures made from this fund.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 288

### HOUSE BILL NO. 1046

(Representatives Dockter, Kasper, M. Ruby, Satrom)  
(Senators Davison, Dever)

AN ACT to amend and reenact sections 37-07.1-05 and 37-07.2-03 of the North Dakota Century Code, relating to higher education grants and tuition waivers for national guard members; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 37-07.1-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-07.1-05. Application for waiver.**

It is the responsibility of the individual member of the national guard to ~~obtain a certificate from the adjutant general or the adjutant general's designee attesting to satisfactory guard performance and describing qualification requirements and to present the certificate to the school in order to obtain a waiver of tuition fees~~request the waiver of tuition fees on an application provided by the adjutant general. The ~~certification~~application must be ~~accomplished~~completed at the time of enrollment for each semester or academic term for which a waiver of tuition fees is requested, or upon initial appointment into the national guard.

**SECTION 2. AMENDMENT.** Section 37-07.2-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-07.2-03. Application for grant.**

It is the responsibility of the individual member of the national guard to request the grant on an application provided by the adjutant general. The application must be completed at the time of enrollment for each semester or academic term for which a grant is requested, or upon initial appointment into the national guard. The grants provided for in this chapter must be paid from such funds as may be appropriated for tuition payment purposes in accordance with chapter 37-07.1.

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

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 289

### SENATE BILL NO. 2314

(Senators J. Lee, Dever, Marcellais)  
(Representatives Owens, Pyle, Westlind)

AN ACT to amend and reenact sections 37-14-01.1 and 37-14-18 and subsection 8 of section 37-19.1-01 of the North Dakota Century Code, relating to the accreditation of county veterans' service officers and the definition of a veteran for purposes of veterans' relief and rehabilitation and veterans' preference.

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

**SECTION 1. AMENDMENT.** Section 37-14-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-14-01.1. Definition of veteran.**

As used in this chapter, "veteran" means an individual who served in the armed forces of the United States on federal active duty for:

1. For reasons other than training and who has been discharged under other than dishonorable conditions; or
2. To whom the United States veterans administration has assigned a service-connected disability rating.

**SECTION 2. AMENDMENT.** Section 37-14-18 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-14-18. County veterans' service officer - Appointment - Duties.**

The board of county commissioners of each county of the state of North Dakota shall appoint, employ, and pay, on a full-time or part-time basis, an officer to be known as a county veterans' service officer. The veterans' affairs commissioner may work directly with county veterans' service officers. An individual may serve as a county veterans' service officer in more than one county. The appointment must be made with the prior advice of the commissioner of veterans' affairs, and in accordance with veterans' preference as provided in section 37-19.1-02. ~~By August 1, 2011, all county~~All county veterans' service officers must be accredited by the national association of county veterans' service officers ~~or the department of veterans' affairs within twelve months of appointment or employment.~~ It is the duty of the county veterans' service officer to become acquainted with the laws, both state and federal, enacted for the benefit of returning servicemen and servicewomen to assist ~~such~~the returning members of the armed forces in the presentation, proof, and establishment of ~~such~~the claims, privileges, and rights ~~as they~~members have. ~~It also is the duty of the county~~The county veterans' service officer ~~to actively~~shall cooperate with and ~~to~~ coordinate the activities of the state and federal agencies within the county ~~which~~the officer serves to facilitate their operation and ensure promptness in the solution of the problems concerned with the re-establishment of returning servicemen and servicewomen in civilian pursuits. A county veterans' service officer may not serve as a conservator for an individual ~~who~~is receiving benefits or services from the

department of veterans' affairs or the United States department of veterans' affairs, except if the individual is the spouse or an immediate family member of the officer.

**SECTION 3. AMENDMENT.** Subsection 8 of section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Veteran" means a ~~North Dakota resident~~ an individual who is a wartime:
  - a. Is a veteran as defined in subsection 21 of section 37-01-40; or
  - b. Has been honorably discharged from the national guard or a reserve unit located within North Dakota and:
    - (1) Has completed a minimum of twenty years of service; or
    - (2) Served in a combat zone.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 290

### HOUSE BILL NO. 1091

(Government and Veterans Affairs Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-17.1-02.1 and 37-17.1-02.2 of the North Dakota Century Code, relating to the operations of the department of emergency services.

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

**SECTION 1. AMENDMENT.** Section 37-17.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-17.1-02.1. Department of emergency services.**

The department of emergency services consists of a division of state radio and a division of homeland security. The adjutant general is the director of the department. The adjutant general shall provide for shared administration of both divisions. ~~The division of homeland security consists of the state emergency operations center section, the disaster recovery section, and the homeland security section.~~ The adjutant general shall appoint a separate director of each division. A division director serves at the pleasure of the adjutant general. The adjutant general shall fix the compensation of a division director within limits of legislative appropriation.

**SECTION 2. AMENDMENT.** Section 37-17.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-17.1-02.2. Advisory committee to department of emergency services.**

The adjutant general shall create one or more advisory committees to the department of emergency services. An advisory committee may consist of not more than ~~eleven~~<sup>twelve</sup> members representing local and state interests in the department. Members must be appointed to four-year staggered terms. An advisory committee shall advise the department regarding collaboration with political subdivisions, and each member of an advisory committee shall report to the local interest each member represents concerning recommendations approved by the committee. Each member of the advisory committee is entitled to be paid sixty-two dollars and fifty cents per day for time spent in attendance at meetings and is entitled to be reimbursed for the member's actual and necessary expenses at the rates and in the manner provided by law for other state officers. The compensation and expenses must be paid out of department appropriations.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 291

### SENATE BILL NO. 2096

(Government and Veterans Affairs Committee)  
(At the request of the Adjutant General)

AN ACT to create and enact section 37-17.1-14.6 of the North Dakota Century Code, relating to a mutual aid compact with the northern emergency management; and to amend and reenact sections 37-17.1-14.2 and 37-17.1-14.3 of the North Dakota Century Code, relating to agreements for mutual aid.

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

**SECTION 1. AMENDMENT.** Section 37-17.1-14.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-17.1-14.2. Interstate mutual aid agreements.**

1. This state may enter into an interstate mutual aid agreement or compact with any state that has enacted or shall enact the compact substantially in the form contained in section 37-17.1-14.5.
2. ~~The governor may enter into an interstate agreement with any state if the governor finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency or disaster prevention, preparedness, mitigation, response, and recovery.~~ This state may enter the northern emergency management assistance compact with any state or Canadian province that has enacted or shall enact the compact substantially in the form contained in section 37-17.1-14.6.
3. ~~The governor may deny the request of a requesting state as the governor determines necessary.~~ This state may enter an interstate agreement with any state if the governor finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency or disaster prevention, protection, mitigation, response, and recovery.
4. ~~All interstate mutual aid compacts and other interstate agreements to which this state is a party dealing with disaster or emergency prevention, preparedness, response, recovery, or mitigation must be reviewed and made current every four years.~~ This state may enter intergovernmental arrangements with neighboring Canadian provinces for the purpose of exchanging emergency or disaster resources. When considered of mutual benefit, the governor may, subject to the limitations of law enter such agreements.
5. If a person holds a license, certificate, or other permit issued by any state or political subdivision evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster, and this state shall give due recognition to the license, certificate, or other permit.
6. ~~When considered of mutual benefit, the governor may, subject to the limitations of law, enter into intergovernmental arrangements with neighboring~~



provinces of Canada for the purpose of exchanging disaster or emergency resources. All interstate mutual aid compacts and other interstate agreements, to which this state is a party, dealing with emergency or disaster prevention, protection, mitigation, response, and recovery must be reviewed and made current every four years.

**SECTION 2. AMENDMENT.** Section 37-17.1-14.3 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-14.3. Authority to join interstate mutual aid agreements - Interstate compacts.**

1. The governor, in the name of the state, may join with other states and Canadian provinces in the interstate mutual aid agreement or compact.
2. The governor may negotiate and execute such supplemental agreements as may be necessary and proper to fully carry out the terms and provisions of the interstate mutual aid agreement agreements or compact compacts as set forth in section sections 37-17.1-14.5 and 37-17.1-14.6.
3. The governor may deny the request of a requesting state or Canadian province as the governor determines necessary.
4. Local emergency management organizations may enter interstate mutual aid agreements with nearby political subdivisions or public response entities. Such agreements are valid once filed with the department of emergency services.

**SECTION 3.** Section 37-17.1-14.6 of the North Dakota Century Code is created and enacted as follows:

**37-17.1-14.6. Northern emergency management assistance compact.**

The northern emergency management assistance compact is entered with all jurisdictions legally joining the compact in the form substantially as follows:

**ARTICLE I - NAME AND SCOPE**

1. This compact is established as directed by the state and province emergency management assistance memorandum of agreement and brought into force by congressional consent on September 14, 2012, by the 112th Congress of the United States of America.
2. The object of this compact shall be to facilitate cross-border emergency management assistance through mutual aid.

**ARTICLE II - MEMBERSHIP**

1. Membership in this compact shall be open to the states and provinces having signed the state and province emergency management assistance memorandum of agreement, hereinafter referred to as party jurisdictions.
2. Representatives from the nonsignatory states and provinces as well as the national governments of Canada and the United States shall be nonvoting members.

### **ARTICLE III - BOARD**

1. The policies and direction of this compact shall be directed and controlled by a board of directors, which shall consist of the directors of emergency management or measures, or their designated official substitute from the party jurisdictions. The designated official substitute shall be specified either on the jurisdiction's compact contact sheet or in writing to the compact co-chairs.
2. The board may invite representatives from other governments, subject matter experts, and such other individuals as they may deem appropriate to attend the compact meetings as nonvoting participants.

### **ARTICLE IV - GOVERNMENT**

1. The board of directors shall act as the governing body of this compact.
2. The following shall be the officers:
  - a. A co-chair elected from the participating states; and
  - b. A co-chair elected from the participating provinces.
3. The co-chairs shall be elected biannually in alternate years.
4. In the event a co-chair is unable to fulfill the co-chair's term, a special election shall be held at the next meeting, regular or special, to fill the remainder of the co-chair's term.

### **ARTICLE V - SUBCOMMITTEES AND WORKING GROUPS**

1. The compact board of directors may appoint subcommittees and working groups as needed.
2. Each subcommittee and working group shall be co-chaired by a representative of a Canadian and a United States party jurisdiction.
3. The subcommittees and working groups shall report to this compact through the co-chairs and the co-chairs are ex officio members of all subcommittees and working groups.

### **ARTICLE VI - MEETINGS**

1. This compact shall meet at least once a year at locations to be determined by the board of directors.
2. Special meetings may be held at any time by order of the co-chairs.
3. Meetings may be held by conference call or other communication facilities that permit all persons participating in the meeting to communicate with each other, and all persons participating in the meeting by such means are deemed to be present.
4. A jurisdiction may participate at its own cost in any meeting by telephone or other communication facilities that permit all persons participating in the

meeting to communicate with each other, and a person participating in a meeting by such means is deemed to be present at the meeting.

5. The newest co-chair shall be responsible for creating a record of decisions for each meeting.
6. The newest co-chair shall be responsible for distributing meeting agendas, records of decisions, and any documents slated for discussion at a meeting to the board of directors.
7. A meeting agenda and any documents slated for discussion at a meeting should be circulated to the board of directors a minimum of thirty days prior to the meeting.
8. All meetings shall follow a form agreed to by the co-chairs.
9. A quorum shall consist of a simple majority of party jurisdictions that consists of at least one party jurisdiction from Canada and one party jurisdiction from the United States of America. Jurisdictions participating by proxy shall not count towards a quorum.

#### **ARTICLE VII - VOTING**

1. Each party jurisdiction shall have only one vote on any motion or election.
2. Motions may only be introduced or seconded by members of the board of directors present or represented by proxy.
3. Motions arising at any meeting shall be determined by consensus. In the absence of consensus a two-thirds majority is required from each of the Canadian and United States of America party jurisdictions either present or represented by proxy. A vote given in accordance with the terms of a proxy shall be valid.
4. If the director or designated official substitute of a party jurisdiction cannot attend a meeting of the northern emergency management assistance compact, the party jurisdiction may give a proxy to another jurisdiction. A proxy shall be in writing under the hand of the director or designated official substitute. The proxy shall be delivered to one of the co-chairs before or at the meeting. A proxy is valid for one meeting.

#### **ARTICLE VIII - SIGNING AUTHORITY**

Documents or other instruments requiring the signature of the compact shall be signed by both co-chairs.

#### **ARTICLE IX - AMENDMENTS**

These bylaws may be amended by a two-thirds vote at any meeting of the compact provided that thirty days' notice in writing be given of such meeting to the voting member of each party jurisdiction and that the notice contains the text, or the general nature, of any proposed amendments.

**ARTICLE X - OPERATIONS MANUAL AND BYLAWS**

1. The most recent past co-chair shall be responsible for updating and storing a copy of the most recent version of the operations manual and bylaws.
2. Any party jurisdiction may request that amendments be made to the operations manual and bylaws.
3. All requests for amendments to the operations manual and bylaws shall be submitted to the past co-chair responsible for the operations manual and bylaws.
4. Amendments to the operations manual and bylaws shall come into force on the date that the operations manual or bylaws, respectively, are approved by the board of directors or a later date as decided by the board of directors.

**ARTICLE XI - TRAINING**

The senior co-chair shall be responsible for coordinating delivery of the compact training and exercises to party jurisdictions.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 292

### HOUSE BILL NO. 1203

(Representatives Delzer, Pollert)  
(Senators Holmberg, Wardner)

AN ACT to amend and reenact section 37-17.1-22 of the North Dakota Century Code, relating to response and recovery costs of disasters or emergencies.

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

**SECTION 1. AMENDMENT.** Section 37-17.1-22 of the North Dakota Century Code is amended and reenacted as follows:

#### **37-17.1-22. Disaster or emergency response and recovery costs.**

Whenever the governor declares a state of disaster or emergency in accordance with section 37-17.1-05, or when the governor enters into an agreement with the federal government following a disaster or emergency declared by the president of the United States, the director of the division of homeland security shall determine and record the costs of the state response and recovery operations in accordance with an agreement with the federal government or in accordance with procedures established by the governor in the case of a state-declared disaster or emergency. Immediately following the response or recovery operations, or prior thereto if determined necessary by the governor, the governor ~~shall make application~~ may apply to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state. Notwithstanding other provisions of chapter 54-16, it must be conclusively presumed upon receipt by the emergency commission of ~~such~~ the application from the governor that a disaster or emergency exists, and the commission ~~immediately shall~~ may grant and direct the transfer to the department of the governor designated representative of an amount ~~equal~~ up to that certified in ~~such~~ the application by the governor.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 293

### HOUSE BILL NO. 1435

(Representatives Bosch, Heinert, Nathe, Porter)  
(Senators Cook, Schaible, Wardner)

AN ACT to amend and reenact sections 37-17.3-02, 37-17.3-02.2, and 37-17.3-03 of the North Dakota Century Code, and section 10 of chapter 247 of the 2017 Session Laws, relating to the governance, purchase, financing, and operation of the statewide interoperable radio network; to provide for a legislative management study; to provide an appropriation; to provide for a transfer; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 37-17.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.3-02. Statewide interoperable radio broadcasting system network.**

The director chief information officer of the information technology department may purchase the necessary apparatus and equipment to construct or establish a statewide interoperable radio broadcasting system network for this state that which enables seamless interoperable communications from local, state, and federal levels. However, the chief information officer may not use state funds including resources from the statewide interoperable radio network fund for dispatch consoles, connectivity, and associated necessary software, equipment, or services to support a public safety answering point unless these items are intended for use by a state agency or state department. The director chief information officer is charged with the operation and maintenance of the system statewide interoperable radio network as directed by the statewide interoperability executive committee.

<sup>121</sup> **SECTION 2. AMENDMENT.** Section 37-17.3-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.3-02.2. North Dakota statewide interoperability executive committee. (Effective through July 31, 2023)**

1. The statewide interoperability executive committee consists of:
  - a. The director of state radio or a designee;
  - b. The director of the division of homeland security or a designee;
  - c. The superintendent of the highway patrol or a designee;
  - d. The adjutant general or a designee;
  - e. The director of the department of transportation or a designee;

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<sup>121</sup> Section 37-17.3-02.2 was also amended by section 11 of House Bill No. 1021, chapter 21.

- f. A representative of the North Dakota sheriff's and deputies association;
  - g. A representative of the North Dakota emergency managers association;
  - h. A representative of the North Dakota fire chiefs association;
  - i. A representative of the North Dakota emergency medical services association;
  - j. A representative of the North Dakota police chiefs association;
  - k. A representative of the North Dakota peace officers association;
  - l. A representative of the North Dakota 911 association;
  - m. A representative of the North Dakota association of counties;
  - n. A representative of the North Dakota league of cities;
  - o. The North Dakota chief information officer or a designee;
  - n-p. The North Dakota Indian affairs commission executive director or a designee; and
  - e-q. One member of the North Dakota house of representatives and one member of the North Dakota senate appointed by the legislative management.
2. The committee shall elect a chairman and vice chairman for terms of two years upon its initial meeting. ~~The adjutant general shall call and convene the initial meeting.~~
  3. The committee shall prepare recommendations regarding a statewide ~~integrated interoperable radio system network~~ with due consideration for all stakeholders reliant upon the statewide interoperable radio communication system network.
  4. The committee may adopt rules governing the connection or integration of public safety answering points to the statewide interoperable radio network.

**North Dakota statewide interoperability executive committee. (Effective after July 31, 2023)**

1. The statewide interoperability executive committee consists of:
  - a. The director of state radio or a designee;
  - b. The director of the division of homeland security or a designee;
  - c. The superintendent of the highway patrol or a designee;
  - d. The adjutant general or a designee;
  - e. The director of the department of transportation or a designee;
  - f. A representative of the North Dakota sheriff's and deputies association;

- g. A representative of the North Dakota emergency managers association;
  - h. A representative of the North Dakota fire chiefs association;
  - i. A representative of the North Dakota emergency medical services association;
  - j. A representative of the North Dakota police chiefs association;
  - k. A representative of the North Dakota peace officers association;
  - l. A representative of the North Dakota 911 association;
  - m. A representative of the North Dakota association of counties;
  - n. A representative of the North Dakota league of cities; and
  - ~~m-o.~~ The North Dakota chief information officer or a designee;
  - p. The executive director of the North Dakota Indian affairs commission or a designee; and
  - q. One member of the North Dakota house of representatives and one member of the North Dakota senate appointed by the legislative management.
2. The committee shall elect a chairman and vice chairman for terms of two years upon its initial meeting. ~~The adjutant general shall call and convene the initial meeting.~~
  3. The committee shall prepare recommendations regarding a statewide ~~integrated interoperable radio system~~ network with due consideration for all stakeholders reliant upon ~~the statewide interoperable radio communication system~~ network.
  4. The committee may adopt rules governing the connection or integration of public safety answering points to the statewide interoperable radio network.

<sup>122</sup> **SECTION 3. AMENDMENT.** Section 37-17.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.3-03. Political subdivisions may furnish receiving and transmitting sets for enforcement purposes - State cost-share.**

1. Each county and organized city within the state may furnish to its law enforcement, firefighters, and emergency medical personnel the appropriate radio ~~or radio systems~~ that can access the ~~state~~ statewide interoperable radio system network. Each mobile radio that is programmed to access the ~~state~~ statewide interoperable radio system network must be registered with the ~~division of state radio and assigned a unit number~~ approved by the statewide interoperability executive committee. ~~A one-time fee of ten dollars for registering and assigning unit numbers must be paid to the director on all newly added radios by the appropriate governmental entity. Agencies with~~

<sup>122</sup> Section 37-17.3-03 was also amended by section 12 of House Bill No. 1021, chapter 21.



~~registered radios must validate assigned unit numbers annually. The chief information officer shall establish a process to register and audit users of the statewide interoperable radio network.~~

2. The information technology department may provide a state cost-share for each radio purchased under this section. The state cost-share for each radio is one thousand five hundred dollars unless the cost of the radio is less than one thousand five hundred dollars in which case the state cost-share is the cost of the radio.

**SECTION 4. AMENDMENT.** Section 10 of chapter 247 of the 2017 Session Laws is amended and reenacted as follows:

**SECTION 10. EXPIRATION DATE.** ~~This Sections 3, 6, 7, 8, and 9 of this Act is~~ are effective through July 31, 2023, and after that date ~~is~~ are ineffective.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - STATEWIDE INTEROPERABLE - RADIO NETWORK.** During the 2019-20 interim, the legislative management shall consider studying consolidated emergency and interoperable public safety communications system governance and funding options. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 6. LINE OF CREDIT.** The Bank of North Dakota shall extend a line of credit not to exceed \$80,000,000 to the information technology department at the prevailing interest rate charged to North Dakota governmental entities. The information technology department shall repay the line of credit from funds available in the statewide interoperable radio network fund or other funds over a period not to exceed twenty years from the date of issuance of the line of credit, as appropriated by the legislative assembly. The information technology department may access the line of credit, as necessary, to provide funding as authorized by the legislative assembly for statewide interoperable radio network projects.

**SECTION 7. TRANSFER - BANK OF NORTH DAKOTA PROFITS - STATEWIDE INTEROPERABLE RADIO NETWORK FUND.** The industrial commission shall transfer the sum of \$20,000,000 from the current earnings and accumulated undivided profits of the Bank of North Dakota to the statewide interoperable radio network fund, during the period beginning with the effective date of this Act, and ending June 30, 2021.

**SECTION 8. APPROPRIATION.** There is appropriated out of any moneys in the strategic investment and improvements fund, not otherwise appropriated, the sum of \$20,000,000, out of any moneys in the statewide interoperable radio network fund, not otherwise appropriated, the sum of \$20,000,000, and from proceeds of a Bank of North Dakota line of credit, the sum of \$80,000,000, or so much of the sums as may be necessary, to the information technology department for the purpose of statewide interoperable radio network projects, for the period beginning with the effective date of this Act, and ending June 30, 2021.

**SECTION 9. EMERGENCY.** Sections 6, 7, and 8 of this Act are declared to be an emergency measure.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 294

### HOUSE BILL NO. 1129

(Representatives Laning, Trottier)  
(Senator Marcellais)

AN ACT to amend and reenact section 37-18-04 of the North Dakota Century Code, relating to duties of the commissioner of veterans' affairs.

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

**SECTION 1. AMENDMENT.** Section 37-18-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-18-04. Duties of commissioner.**

~~It is the duty of the commissioner to coordinate agencies or instrumentalities of the state set up to render service and benefits to returning veterans; to have charge of~~To provide services and benefits to veterans and the veterans' dependents, the commissioner shall:

1. Coordinate with any federal agency or public or private entity of this state or any other state as required to fulfill the commissioner's duties;
2. Supervise and implement programs and benefits authorized by statute; ~~to assist~~
3. Assist or represent veterans or their widows, administrators, executors, guardians, or heirs, in processing claims; ~~to advise~~
4. Advise and assist veterans in taking advantage of the ~~provisions of the Servicemen's Readjustment Act of 1944 [Pub. L. 78-346; 58 Stat. 291], or any similar or related measures~~benefits and services for veterans afforded by the federal government; ~~to provide~~
5. Provide counties with recommended qualifications and standards for county veterans' service officers; ~~to assist~~
6. Assist counties with training of county veterans' service officers; ~~to provide~~
7. Provide county veterans' service officers with educational materials; ~~to assist~~
8. Assist county veterans' service officers in the performance of their duties; ~~to disseminate~~
9. Disseminate information; and ~~to do any and~~
10. Do all things necessary and proper for the purpose of carrying out the intent and purposes of this chapter.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 295

### HOUSE BILL NO. 1316

(Representatives Pyle, Becker, Ertelt, Hoverson, Johnston, Marschall)  
(Senators Bekkedahl, Luick)

AN ACT to amend and reenact section 37-18-11 of the North Dakota Century Code, relating to maintenance of records of veterans' and veterans' dependents.

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

**SECTION 1. AMENDMENT.** Section 37-18-11 of the North Dakota Century Code is amended and reenacted as follows:

#### **37-18-11. Release of information and records - Confidential nature.**

All records and papers pertaining or relating to veterans ~~which are transmitted by the United States government to the department of veterans' affairs or veterans' eligible dependents~~ must be kept and maintained by ~~said~~ the department of veterans' affairs under the following provisions and conditions:

1. All records and papers of the department ~~are to~~ must be utilized in the manner to best serve the public interest, but the veteran's right of privacy as to information pertaining to the veteran's military or naval service and to confidential information contained in the veteran's application for benefits will be respected.
2. All reports of investigation made by employees of the department or at the direction of the department for official departmental purposes are for the use of the commissioner and the commissioner's staff only. Materials and information which disclose the investigative techniques of the department or the identity of confidential informants and material received in confidence by representatives of the department will not be released.
3. Records pertaining to any application for benefits, whether pending or adjudicated, ~~will be~~ deemed confidential and ~~no disclosure therefrom will~~ may not be made disclosed except in the circumstances and under the conditions set forth in this chapter, ~~and any person making application. For purposes of this section, "applicant" means an individual applying for benefits must hereinafter be referred to as the applicant.~~
4. An applicant may not have access to official department records concerning the applicant, but information from official records may be disclosed to an applicant or the applicant's duly authorized representative as to matters concerning the applicant.
5. "Duly authorized representative" ~~is defined as~~ means any person authorized in writing by the applicant to act for the applicant, or the applicant's legally constituted representative if the applicant is incompetent or deceased. If for proper reason ~~no such~~ a representative has not been or will not be appointed, the applicant's spouse, an adult child, or if the applicant is unmarried, either of

the applicant's parents ~~shall bear~~ recognized as the duly authorized representative of the applicant.

6. Medical information may be disclosed as follows:
  - a. Except as otherwise required by law, information contained in a veteran's medical records on file ~~shall~~must be disclosed to the residentveteran on request.
  - b. Information contained in medical records of residents ~~and beneficiaries~~veterans or veterans' dependents pertaining to medical history, diagnosis, findings, or treatment may be disclosed directly to physicians and hospitals for treatment, payment, and health care operations, and as otherwise authorized by law. This information is to be treated as confidential information. This information also may be disclosed without the consent of the residentveteran or the resident's ~~personal~~veteran's duly authorized representative when a request for the information is received from the veterans' administration, the United States public health service, the superintendent of a state hospital, a commissioner or head of a state department of mental hygiene, or head of a state, county, or city health department and the disclosure is required by law, or for the purpose of treatment, payment, or health care operations.
7. Information contained in loan files may be made available to any party having an interest in ~~such~~the loan transaction upon approval by the ~~director~~commissioner or pursuant to rules and regulations ~~promulgated~~adopted by the ~~director~~commissioner.
8. Information contained in department files required for official purposes by any agency of the United States government or by any agency of ~~the~~this state of ~~North Dakota~~, or by any law enforcement or public welfare agency of any ~~North Dakota~~ county or municipality of this state may be furnished in response to an official request, written or oral, from ~~such~~the agency. The requesting agency must be asked to specify the purpose for which ~~such~~the information is to be used.
9. Subject to the limitations of any other law, members of the legislative assembly may be furnished ~~such~~the information contained in department files as may be requested for official use.
10. A county veterans' service officer may ~~be permitted to~~ inspect records pertaining to any application for benefits in which the officer's office may be directly involved upon the condition that only ~~such~~the information contained ~~therein~~in the application as may be properly disclosed ~~will~~must be disclosed by the officer only to the applicant or if the applicant is incompetent, to the applicant's ~~legally constituted~~duly authorized representative.
11. When records pertaining to any application for benefits are requested for use in any judicial proceedings, ~~they will~~the records may be released only upon service of a proper subpoena and upon the condition ~~that they will be~~the records will be returned upon conclusion of ~~such~~the proceedings.
12. Addresses of applicants from department records ~~will~~may not be furnished, except as provided in subsections 5 through 10. When an address is requested by a person to whom it may not be furnished, the person making

the request ~~will~~must be informed that correspondence enclosed in an unsealed envelope showing no return address, with the name of the addressee ~~thereon~~on the correspondence, and bearing sufficient postage to cover mailing costs will be forwarded by the department. ~~At the time~~When the correspondence is forwarded, the department's return address ~~will~~must be placed on the envelope. If undelivered mail is returned to the department, the original sender ~~will~~must be notified thereof, ~~but~~and the envelope ~~will~~must be retained by the department. ~~In no event will~~The department may not forward letters ~~be forwarded~~ for the purposes of debt collection, canvassing, or harassment.

13. Separation documents evidencing service in the armed forces of the United States ~~will be considered~~and information extracted from a separation document by the United States department of defense are confidential and privileged, anything contained in subsections 4 through 10 notwithstanding. Examination of ~~such~~those records ~~will be~~is limited to authorized employees of the department and information ~~entered thereon~~within those records may be disclosed only to interested governmental agencies for the purpose of assisting veterans ~~and their~~or veterans' eligible dependents to obtain the rights and benefits to which ~~they~~the veterans or veterans' eligible dependents may be entitled.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 296

### HOUSE BILL NO. 1131

(Representatives Laning, Trottier)  
(Senators Dever, Marcellais)

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to exempting the sale of commemorative memorial coins from sales tax; to amend and reenact section 37-18-12 and subsection 2 of section 37-18-15 of the North Dakota Century Code, relating to funding authority of the department of veterans' affairs and veteran commemorative coins; to provide a continuing appropriation; and to provide for retroactive application.

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

**SECTION 1. AMENDMENT.** Section 37-18-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-18-12. Funding authority - Continuing appropriation.**

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1. Except as otherwise provided by subsection 2, the department of veterans' affairs may accept and expend funds from any source, including federal or private sources, to be used to assist veterans or qualified veterans' spouses in obtaining assistance and to pay other expenses authorized by law incurred in carrying out programs of benefit and service for resident North Dakota veterans as authorized by the administrative committee on veterans' affairs with the approval of the emergency commission. However, all
2. The department of veterans' affairs may apply for, accept, and receive any private donation, gift, grant, or bequest that is offered or tendered with a specifically identified purpose or a restrictive condition and which is related to a benefit or service for resident North Dakota veterans.
  - a. The department shall administer and expend any private donation, gift, grant, or bequest in accordance with the purpose or condition imposed by the donor.
  - b. All moneys received or accepted under this subsection are appropriated on a continuing basis to the department of veterans' affairs in accordance with the donor's instructions.
3. All interest earnings from the veterans' postwar trust fund received by the department of veterans' affairs from the administrative committee on veterans' affairs are appropriated to the department on a continuing basis.

**SECTION 2. AMENDMENT.** Subsection 2 of section 37-18-15 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~A family member of a deceased North Dakota veteran~~Any person may purchase a commemorative memorial coin from the department of veterans' affairs at a cost determined by the department.

<sup>123</sup> **SECTION 3.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from all sales of commemorative memorial coins under section 37-18-15.

**SECTION 4. RETROACTIVE APPLICATION.** Subsection 2 of section 1 of this Act applies to all private donations, gifts, grants, and bequests already tendered, offered, or made with a specifically identified purpose, or a restrictive condition.

Approved March 28, 2019

Filed March 29, 2019

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<sup>123</sup> Section 57-39.2-04 was also amended by section 7 of Senate Bill No. 2089, chapter 477, section 4 of Senate Bill No. 2192, chapter 95, and section 6 of Senate Bill No. 2193, chapter 341.

## CHAPTER 297

### HOUSE BILL NO. 1054

(Representatives Magrum, Vetter, M. Ruby, McWilliams, Paulson)  
(Senators Bekkedahl, O. Larsen, Sorvaag)

AN ACT to amend and reenact subsection 4 of section 37-18.1-03 of the North Dakota Century Code, relating to the powers and duties of the administrative committee on veterans' affairs.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 37-18.1-03 of the North Dakota Century Code is amended and reenacted as follows:

4. The committee ~~shall~~, under recommendation from the board or the subcommittee, shall present any matters needing attention and action to the appropriate board, commission, agency, or department of the state, and the North Dakota veterans' ~~coordinating~~legislative council.

Approved April 4, 2019

Filed April 5, 2019



## CHAPTER 298

### HOUSE BILL NO. 1095

(Government and Veterans Affairs Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact subsection 2 of section 37-29-01 and subsection 3 of section 37-29-03 of the North Dakota Century Code, relating to the definition of discrimination against volunteer emergency responders.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 37-29-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Volunteer emergency responder" means an individual in good standing as:
  - a. A volunteer member of the ~~North Dakota~~ army national guard or ~~North Dakota~~ air national guard of this state or any state; or
  - b. A volunteer civilian member of the civil air patrol.

**SECTION 2. AMENDMENT.** Subsection 3 of section 37-29-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Except for an involuntarily activated ~~North Dakota~~ national guard member, subsection 1 does not apply if due to serving as a volunteer emergency responder, the employee is absent or tardy from the employee's place of employment for a period that exceeds twenty regular working days in a calendar year.

Approved April 23, 2019

Filed April 24, 2019

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 299

### SENATE BILL NO. 2123

(Senator Patten)  
(Representative Longmuir)

AN ACT to amend and reenact sections 38-08-04.4, 38-08-04.5, 38-08-04.8, and 38-08-04.9 of the North Dakota Century Code, relating to the authorization to enter contracts, abandoned oil and gas well plugging and site reclamation fund, and confiscation of equipment and recovery for costs of plugging and reclamation of sites with bonds held by the North Dakota industrial commission.

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

**SECTION 1. AMENDMENT.** Section 38-08-04.4 of the North Dakota Century Code is amended and reenacted as follows:

#### **38-08-04.4. Commission authorized to enter into contracts.**

The commission may enter public and private contractual agreements for the plugging or replugging of oil and gas or injection wells, the removal or repair of related equipment, the reclamation of abandoned oil and gas or injection well sites, the reclamation of saltwater handling facility sites, the reclamation of treating plant sites, and the reclamation of oil and gas-related pipelines and associated facilities, including reclamation as a result of leaks or spills from a pipeline or associated facility, if any of the following apply:

1. The person or company drilling or operating the well or equipment cannot be found, has no assets with which to properly plug or replug the well or reclaim the well site, cannot be legally required to plug or replug the well or to reclaim the well site, pipeline, or associated pipeline facility, or damage is the result of an illegal dumping incident.
2. There is no bond covering the well to be plugged or the site to be reclaimed or there is a bond but the cost of plugging or replugging the well or reclaiming the site, pipeline, or associated pipeline facility exceeds the amount of the bond or damage is the result of an illegal dumping incident.
3. The well, equipment, pipeline, or associated pipeline facility is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety.

Sealed bids for any well plugging or reclamation work under this section must be solicited by placing a notice in the official county newspaper of the county in which the work is to be done and in such other newspapers of general circulation in the area as the commission may deem appropriate. Bids must be addressed to the commission

and must be opened publicly at the time and place designated in the notice. The contract must be let to the lowest responsible bidder, but the commission may reject any or all bids submitted. If a well or equipment is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety, the commission, without notice or the letting of bids, may enter into contracts necessary to mitigate the problem.

The contracts for the plugging or replugging of wells or the reclamation of well sites must be on terms and conditions as prescribed by the commission, but at a minimum the contracts shall require the plugging and reclamation to comply with all statutes and rules governing the plugging of wells and reclamation of well sites.

**SECTION 2. AMENDMENT.** Section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund - Continuing appropriation - Budget section report.**

There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:
  - a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
  - b. Moneys received from the forfeiture of drilling and reclamation bonds.
  - c. Moneys received from any federal agency for the purpose of this section.
  - d. Moneys donated to the commission for the purposes of this section.
  - e. Moneys received from the state's oil and gas impact fund.
  - f. Moneys recovered under the provisions of section 38-08-04.8.
  - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
  - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
  - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
  - j. Civil penalties assessed under section 38-08-16.
2. Moneys in the fund may be used for the following purposes:
  - a. Contracting for the plugging of abandoned wells.
  - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
  - c. To pay mineral owners their royalty share in confiscated oil.

- d. Defraying costs incurred under section 38-08-04.4 in reclamation of saltwater handling facilities, treating plants, and oil and gas-related pipelines and associated facilities.
  - e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to five million dollars per biennium from the fund in the following priority:
    - (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.
    - (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.
    - (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.
    - (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.
  - f. For transfer by the office of management and budget, upon request of the industrial commission, to the environmental quality restoration fund for use by the state department of health for the purposes provided under chapter 23-31, if to address environmental emergencies relating to oil and natural gas development, including the disposal of oilfield waste and oil or natural gas production and transportation by rail, road, or pipeline. If a transfer requested by the industrial commission has been made under this subdivision, the state department of health shall request the office of management and budget to transfer from subsequent deposits in the environmental quality restoration fund an amount sufficient to restore the amount transferred from the abandoned oil and gas well plugging and site reclamation fund.
3. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purposes in this section.
  4. The commission shall report to the budget section of the legislative management on the balance of the fund and expenditures from the fund each biennium.

**(Contingent effective date - See note) Abandoned oil and gas well plugging and site reclamation fund - Continuing appropriation - Budget section report.**

There is created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:

- 
- a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
  - b. Moneys received from the forfeiture of drilling and reclamation bonds.
  - c. Moneys received from any federal agency for the purpose of this section.
  - d. Moneys donated to the commission for the purposes of this section.
  - e. Moneys received from the state's oil and gas impact fund.
  - f. Moneys recovered under the provisions of section 38-08-04.8.
  - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
  - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
  - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
  - j. Civil penalties assessed under section 38-08-16.
2. Moneys in the fund may be used for the following purposes:
- a. Contracting for the plugging of abandoned wells.
  - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
  - c. To pay mineral owners their royalty share in confiscated oil.
  - d. Defraying costs incurred under section 38-08-04.4 in reclamation of saltwater handling facilities, treating plants, and oil and gas-related pipelines and associated facilities.
  - e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to five million dollars per biennium from the fund in the following priority:
    - (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.
    - (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.
    - (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.

- (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.
- f. For transfer by the office of management and budget, upon request of the industrial commission, to the environmental quality restoration fund for use by the department of environmental quality for the purposes provided under chapter 23.1-10, if to address environmental emergencies relating to oil and natural gas development, including the disposal of oilfield waste and oil or natural gas production and transportation by rail, road, or pipeline. If a transfer requested by the industrial commission has been made under this subdivision, the department of environmental quality shall request the office of management and budget to transfer from subsequent deposits in the environmental quality restoration fund an amount sufficient to restore the amount transferred from the abandoned oil and gas well plugging and site reclamation fund.
3. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purposes in this section.
4. The commission shall report to the budget section of the legislative management on the balance of the fund and expenditures from the fund each biennium.

**SECTION 3. AMENDMENT.** Section 38-08-04.8 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-04.8. Recovery for costs of plugging and reclamation.**

If the commission, its agents, employees, or contractors, plugs or replugs a well or reclaims a well site, pipeline facility, production facility, saltwater handling facility, or treating plant under the provisions of sections 38-08-04.4, 38-08-04.5, 38-08-04.7, 38-08-04.8, 38-08-04.9, and 38-08-04.10, the state has a cause of action for all reasonable expenses incurred in the plugging, replugging, or reclamation against the operator of the well at the time the well is required to be plugged and the well or facility is required to be abandoned or any or all persons who own a working interest in the well, pipeline facility, production facility, saltwater handling facility, or treating plant at the time the well is required to be plugged and the well, pipeline facility, production facility, saltwater handling facility, or treating plant abandoned as a result of the ownership of a lease or mineral interest in the property on which the well, pipeline facility, production facility, saltwater handling facility, or treating plant is located. The term "working interest owner" does not mean a royalty owner or an overriding royalty interest owner. The commission shall seek reimbursement for all reasonable expenses incurred in plugging any well or reclaiming any well site, pipeline facility, production facility, saltwater handling facility, or treating plant through an action instituted by the attorney general. The liability of any working interest owner under this section shall be limited to that proportion of the reasonable expenses incurred by the commission that the interest of any such working interest owner bears to the entire working interest in the well. Any money collected in a suit under this section must be deposited in the state abandoned oil and gas well plugging and site reclamation fund. Any suit brought by the commission for reimbursement under this section may be brought in the district court for Burleigh County, the county in which the plugged well or reclaimed well site, pipeline facility, production facility, saltwater handling facility, or treating plant is located, or the county in which any defendant resides.

**SECTION 4. AMENDMENT.** Section 38-08-04.9 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-04.9. Confiscation of equipment and salable oil to cover plugging and reclamation costs.**

When the commission intends to exercise or has exercised its right to plug a well or reclaim a well site, pipeline facility, production facility, saltwater handling facility, or treating plant, the commission, as compensation for its costs, may confiscate any ~~production-related~~ equipment and salable oil at the well site, pipeline facility, production facility, saltwater handling facility, or treating plant. The equipment subject to confiscation is limited to that owned by the well's operator, former operator, or working interest owner. If the commission exercises its authority under this section and there is salable oil at the well site, that oil must be confiscated. The commission shall pay the mineral owners the royalty interest in the oil confiscated at the well site. In determining the mineral owners and their royalty interests, the commission may rely upon the most recent division order it is able to obtain. If one is unavailable or the commission finds the order unreliable, the commission may rely upon any other source of information the commission deems reasonable to determine and pay mineral owners. A confiscation must be by an order of the commission after notice and hearing. A confiscation order transfers title to the commission.

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 300

### SENATE BILL NO. 2344

(Senators Unruh, Cook, Schaible)  
(Representatives Kempenich, Porter)

AN ACT to create and enact section 47-31-09 of the North Dakota Century Code, relating to injection or migration of substances into pore space; and to amend and reenact sections 38-08-25, 38-11.1-01, and 38-11.1-03 of the North Dakota Century Code, relating to pore space and oil and gas production.

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

**SECTION 1. AMENDMENT.** Section 38-08-25 of the North Dakota Century Code is amended and reenacted as follows:

#### **38-08-25. Hydraulic fracturing - Use of carbon dioxide - Designated as acceptable recovery processes.**

1. Notwithstanding any other provision of law, the legislative assembly designates hydraulic fracturing, a mechanical method of increasing the permeability of rock to increase the amount of oil and gas produced from the rock, and the use of carbon dioxide for enhanced recovery of oil, gas, and other minerals acceptable recovery processes in this state.
2. It is in the public interest to promote the use of carbon dioxide to benefit the state, to help ensure the viability of the state's coal and power industries, and to benefit the state economy. Carbon dioxide is a potentially valuable commodity, and increasing its availability is important for commercial, industrial, or other uses, including enhanced recovery of oil, gas, and other minerals.
3. It is in the public interest to encourage and authorize cycling, recycling, pressure maintenance, secondary recovery operations, and enhanced recovery operations utilizing carbon dioxide for the greatest possible economic recovery of oil and gas.
4. It is in the public interest for a person conducting operations authorized by the commission under this chapter to use as much of a subsurface geologic formation as reasonably necessary to allow for unit operations for enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or any other operation authorized by this chapter.
5. Notwithstanding any other provision of law, a person conducting unit operations for enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or any other operation authorized by the commission under this chapter may utilize subsurface geologic formations in the state for such operations or any other permissible purpose under this chapter. Any other provision of law may not be construed to entitle the owner of a subsurface geologic formation to prohibit or demand payment for the use of the subsurface geologic formation for unit



operations for enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or any other operation conducted under this chapter. As used in this section, "subsurface geologic formation" means any cavity or void, whether natural or artificially created, in a subsurface sedimentary stratum.

6. The commission may adopt and enforce rules and orders to effectuate the purposes of this section.

**SECTION 2. AMENDMENT.** Section 38-11.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**38-11.1-01. Legislative findings.**

The legislative assembly finds the following:

1. It is necessary to exercise the police power of incumbent on the state to protect the public welfare of North Dakota which is largely dependent on agriculture and to protect the economic well-being of individuals engaged in agricultural production, while at the same time preserving and facilitating exploration through the utilization of subsurface pore space in accordance with an approved unitization or similar agreement, an oil and gas lease, or as otherwise permitted by law.
2. Exploration for and development of oil and gas reserves in this state interferes with the use, agricultural or otherwise, of the surface of certain land.
3. Owners of the surface estate and other persons should be justly compensated for injury to their persons or property and interference with the use of their property occasioned by oil and gas development.
4. This chapter may not be construed to alter, amend, repeal, or modify the law concerning title to pore space under section 47-31-03.

**SECTION 3. AMENDMENT.** Section 38-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**38-11.1-03. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the drilling of an oil and gas well and the production and completion operations ensuing from the drilling which require entry upon the surface estate and which were commenced after June 30, 1979, and oil and gas geophysical and seismograph exploration activities commenced after June 30, 1983.
3. "Land" means the solid material of earth, regardless of ingredients, but excludes pore space.

4. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes.
- 4.5. "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a specified tract of land.
- 5.6. "Minerals" means oil and gas.
7. "Pore space" means a cavity or void, naturally or artificially created, in a subsurface sedimentary stratum.
- 6.8. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
- 7.9. "Surface owner" means any person who holds record title to the surface of the land as an owner estate on which a drilling operation occurs or is conducted.

**SECTION 4.** Section 47-31-09 of the North Dakota Century Code is created and enacted as follows:

**47-31-09. Injection of substances to facilitate production of oil, gas, or other minerals.**

1. This chapter may not be construed to limit the rights or dominance of a mineral estate to drill or recomplete a well under chapter 38-08. Injection or migration of substances into pore space for disposal operations, for secondary or tertiary oil recovery operations, or otherwise to facilitate production of oil, gas, or other minerals is not unlawful and, by itself, does not constitute trespass, nuisance, or other tort.
2. This section and chapter 38-08 may not be construed to impair the obligations of any contract for use of the surface estate for disposal operations, provided the contract was entered before the effective date of the unit approved by the commission pursuant to sections 38-08-09 through 38-08-09.17, and provided the disposal well is located within the unit area of the approved unit.
3. This section and chapter 38-08 may not be construed to allow the operator of a disposal well where the contract has expired after the effective date of the unit approved by the commission pursuant to sections 38-08-09 through 38-08-09.17 to claim the surface owner should not be compensated as if the new contract for the disposal well on which the contract has expired had been entered after the effective date of the approved unit.
4. The owner of the surface estate upon which the surface location of a disposal well is located does not lose, and may not be deemed to have lost, a claim for trespass, nuisance, or other tort if the operator of the disposal well commences or continues operations of the disposal well in violation of subsections 2 or 3.

Approved April 18, 2019

Filed April 19, 2019

## CHAPTER 301

### SENATE BILL NO. 2037

(Legislative Management)  
(Natural Resources Committee)

AN ACT to create and enact chapters 38-23 and 38-24 of the North Dakota Century Code, relating to the disposal and storage of high-level radioactive waste and subsurface storage and retrieval of nonhydrocarbons; to amend and reenact sections 12.1-06.1-01 and 38-19-09 of the North Dakota Century Code, relating to the definition of illegal transportation or disposal of radioactive waste material or hazardous waste and disposition of unusable products; to repeal chapter 23-20.2 of the North Dakota Century Code, relating to the disposal of nuclear waste material; to provide a penalty; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 12.1-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-06.1-01. Definitions.**

1. For the purpose of section 12.1-06.1-02:
  - a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal association even though those persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler-retailer or other arm's-length relationship with others as to activities or dealings between or among themselves in an illicit operation.
  - b. "Criminal association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state or which is the willful and illegal transportation or disposal of radioactive waste material or hazardous waste.
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 moneylender under the jurisdiction of the state department of 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~~chapter 38-23 or the rules adopted pursuant to that section which were in effect on January 1, 1997~~chapter~~, 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.
  - (20) Human trafficking.
- g. "Records" means any book, paper, writing, record, computer program, or other material.
3. For the purposes of section 12.1-06.1-08:
- a. "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.
  - b. "Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic, communication, or memory and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.
  - c. "Computer network" means the interconnection of communication lines, including microwave, fiber optics, light beams, or other means of electronic or optic data communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.
  - d. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
  - e. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.
  - f. "Computer system" means a set of related, connected, or unconnected computer equipment, devices, and software.
  - g. "Financial instrument" means any credit card, debit card, or electronic fund transfer card, code, or other means of access to an account for the purpose of initiating electronic fund transfers, or any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, marketable security, or any other written instrument which is transferable for value.
  - h. "Property" includes financial instruments, information, electronically produced or stored data, supporting documentation, computer software, and computer programs in either machine or human readable form, and any other tangible or intangible item of value.

- i. "Services" includes computer time, data processing, storage functions, and other uses of a computer, computer system, or computer network to perform useful work.

**(Contingent effective date - See note) Definitions.**

1. For the purpose of section 12.1-06.1-02:
  - a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal association even though those persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler-retailer or other arm's-length relationship with others as to activities or dealings between or among themselves in an illicit operation.
  - b. "Criminal association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state or which is the willful and illegal transportation or disposal of radioactive waste material or hazardous waste.
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 moneylender under the jurisdiction of the state department of 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~~chapter 38-23 or ~~the rules adopted pursuant to that section which were in effect on January 1, 1997~~chapter, or hazardous waste in willful violation of chapter 23.1-04 or the rules adopted ~~which were in effect on January 1, 1997, except for the handling of conditionally exempt small quantities of hazardous waste as was referenced in section 33-24-02-05 of the North Dakota Administrative Code~~pursuant to that chapter.
  - 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.
  - (20) Human trafficking.
- g. "Records" means any book, paper, writing, record, computer program, or other material.
3. For the purposes of section 12.1-06.1-08:
- a. "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

- b. "Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic, communication, or memory and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.
- c. "Computer network" means the interconnection of communication lines, including microwave, fiber optics, light beams, or other means of electronic or optic data communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.
- d. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
- e. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.
- f. "Computer system" means a set of related, connected, or unconnected computer equipment, devices, and software.
- g. "Financial instrument" means any credit card, debit card, or electronic fund transfer card, code, or other means of access to an account for the purpose of initiating electronic fund transfers, or any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, marketable security, or any other written instrument which is transferable for value.
- h. "Property" includes financial instruments, information, electronically produced or stored data, supporting documentation, computer software, and computer programs in either machine or human readable form, and any other tangible or intangible item of value.
- i. "Services" includes computer time, data processing, storage functions, and other uses of a computer, computer system, or computer network to perform useful work.

**SECTION 2. AMENDMENT.** Section 38-19-09 of the North Dakota Century Code is amended and reenacted as follows:

**38-19-09. Disposition of unusable products.**

Products for which there is no beneficial use and which the commission determines to be hazardous must be disposed of in accordance with the provisions of chapter ~~23-20-238-23~~ and other state laws and regulations regarding the management of hazardous waste.

**SECTION 3.** Chapter 38-23 of the North Dakota Century Code is created and enacted as follows:

**38-23-01. General prohibition.**

The placement, storage, exploration, testing, or disposal of high-level radioactive waste within the exterior boundaries of North Dakota is prohibited. If this provision is superseded by federal law, the remaining provisions of this chapter continue to apply.



This section does not limit the authority of the legislative assembly or the commission to issue a notice of disapproval under this chapter.

### **38-23-02. Definitions.**

As used in this chapter:

1. "Commission" means the industrial commission.
2. "High-level radioactive waste" means:
  - a. Highly radioactive material resulting from the reprocessing of spent nuclear fuel, and other highly radioactive material, containing fission products in sufficient concentrations to require permanent isolation, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste; or
  - b. Highly radioactive material that the commission, consistent with existing law and rules, determines requires permanent isolation.
3. "High-level radioactive waste disposal" means the emplacement in a repository of high-level radioactive waste with no foreseeable intent of recovery.
4. "High-level radioactive waste facility" means a premises, building, structure, fixture, or improvements used or operated for the storage or disposal of high-level radioactive waste.
5. "High-level radioactive waste storage" means the retention of high-level radioactive waste with the intent to recover the waste for subsequent use, processing, or disposal.

### **38-23-03. Jurisdiction of the commission and duties.**

1. The commission has jurisdiction and authority over any person or property, public or private, necessary to enforce this chapter. The commission may investigate and determine whether facts exist justifying action by the commission. The state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to this chapter.
2. The commission acting through the state geologist may:
  - a. Serve as the point of contact for the federal department of energy or any other federal agency on any matter related to the long-term or temporary storage or permanent disposal of high-level radioactive waste.
  - b. Issue a notice of disapproval regarding a proposed high-level radioactive waste facility in accordance with federal law when the legislative assembly is not in session. Before issuing a notice of disapproval, the commission shall consult with the high-level radioactive waste advisory council and the local government entities with jurisdiction over the area where the proposed high-level radioactive waste facility is to be located.
3. Only the legislative assembly may issue a notice of disapproval during a legislative session.

4. The commission, acting through the state geologist, may:
- a. Take any action necessary to assert the state's rights relating to the exploration of a suitable location for a high-level radioactive waste facility within the state, including providing comments to a federal agency or initiating litigation.
  - b. Enter agreements with the federal government regarding high-level radioactive waste regulation and facility siting and accept available funds for deposit into the high-level radioactive waste fund.
  - c. Adopt and enforce rules and orders to effectuate the purpose and intent of this chapter.
  - d. Require:
    - (1) Identification of ownership of all high-level radioactive waste facilities and equipment used for high-level radioactive waste storage or disposal.
    - (2) The delivery to the state geologist of basic exploration data collected, within thirty days of field collection of such data, free of charge. Data includes:
      - (a) Sample cuts, core chips, or whole cores;
      - (b) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs;
      - (c) Elevation and location information on data collection points; and
      - (d) Other pertinent information required by the state geologist.
    - (3) The filing of monthly reports in the manner prescribed by the commission and any other reports deemed necessary by the commission.
    - (4) The conducting of all exploration, storage, and disposal operations in a manner to prevent pollution of freshwater supplies and to provide for the protection of the environment, public safety, and economic interests.
    - (5) The reclamation of all land disturbed by operations regulated by this chapter to a condition consistent with prior land use and productive capacity. A permanent marker is to be erected and maintained over the disposal site.
    - (6) The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the commission. The person required to furnish the bond may elect to deposit under such terms as the commission may prescribe a collateral bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which an operator assures faithful performance of all requirements of this chapter and the rules and orders of the commission.

(7) The payment of fees for services performed by the commission, including costs associated with the investigation, review, and processing of the application; monitoring and inspection of the exploration site; monitoring and inspection of the facility; and environmental and monetary impact of the facility. The commission shall set the amount of the fee based on the anticipated actual cost of services rendered and impact to the state and local area. The commission shall set the annual operating fee for a facility permit to be dependent on the size and scope of the facility, but the fee may not be less than one million dollars. Unless otherwise provided by statute, fees collected by the commission must be deposited in the high-level radioactive waste fund, according to procedures established by the state treasurer.

e. Regulate:

(1) The drilling, boring, excavating, and abandonment of all exploration holes drilled for the purpose of obtaining information regarding high-level radioactive waste storage or disposal.

(2) The drilling, boring, excavating, construction, and operation of all high-level radioactive waste facilities.

f. Inspect all exploration, development, and high-level radioactive waste facility sites. For purposes of this subsection, the commission may access all exploration, development, or operational records of inspection and may require the operator's assistance if necessary.

**38-23-04. Permit required.**

1. A person may not commence any actions for testing, exploring, excavating, drilling, boring, or operating a high-level radioactive waste facility without obtaining a permit from the commission.
2. A notice of opportunity for a position paper from the commissioners of the county must be attached to the permit application. A county position paper must be made public at the time the permit application is submitted.
3. A permit may be issued only after notice and hearing and payment of a fee. Notice must be provided in accordance with Rule 3 of the North Dakota Rules of Civil Procedure.
4. An applicant for a permit shall provide notice to a surface owner and any resident of a permanently occupied dwelling located within two miles [3.22 kilometers] of the proposed location, the county commissioners and mayor of any municipality within thirty miles [48.28 kilometers], and publish a notice in the official county newspaper and any county newspaper within thirty miles [48.28 kilometers] of the proposed location.
5. The commission shall give written notice of an application for exploration or facility permit to the county in which exploration is sought or a facility is proposed at least sixty days before the hearing. The commission shall adopt rules establishing deadlines for the issuance of permits.
6. A permit application for a high-level radioactive waste facility must include:

- a. A description of the facility to be permitted.
  - b. A detailed description of the material to be stored or disposed.
  - c. A detailed description of the mechanical construction and operating procedures of the facility.
  - d. A justification for the need for the facility to be permitted, including economic impact.
  - e. 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.
  - f. A detailed discussion and description of a monitoring system to be used to ascertain the integrity of the facility and to ensure compliance with this chapter.
  - g. 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.
  - h. Any other information required by the commission.
7. Following a hearing, the commission may deny an application if the commission determines the testing, exploration, excavating, drilling, or operation poses a threat to human health or the environment or because of concerns related to economic impacts. A person denied a permit may appeal the denial in accordance with chapter 28-32.
  8. The commission may include conditions in a permit which the commission deems necessary to ensure protection of human health and the environment or to address economic impacts.
  9. A permit holder shall furnish and maintain a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the permit, this chapter, and rules adopted by the commission.
  10. The commission shall establish the term of a permit, but the term of a permit may not exceed five years. An application for a permit renewal must be made at least one hundred twenty days before the expiration of the valid permit and is subject to all the procedures and requirements of this section.

### **38-23-05. Procedure.**

The administrative procedure involved in adopting rules or the issuance of orders by the commission under this chapter must be in accordance with chapter 38-08. If the commission determines an emergency exists which requires the making, revoking, changing, amending, modifying, altering, enlarging, renewal, or extension of a rule or order without first having a hearing, the emergency rule or order has the same validity as a hearing held after due notice. The emergency rule or order may remain in force up to fifteen days from its effective date, and expires when a rule or order made after due notice and hearing becomes effective.

**38-23-06. Penalty - Injunction - Applicable provisions.**

Sections 38-08-16 and 38-08-17 are applicable to the provisions of this chapter and to the rules and orders of the commission adopted or issued under this chapter.

**38-23-07. High-level radioactive waste fund - Continuing appropriation.**

There is established a high-level radioactive waste fund into which funds received under an agreement entered under this chapter, permit fees, and civil penalties must be deposited. The commission shall administer the fund and may use the fund to fulfill any of the commission's powers and duties under this chapter. 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 purposes of this chapter.

**38-23-08. High-level radioactive waste advisory council - Members, powers, and duties.**

1. The high-level radioactive waste advisory council is established to advise the commission in carrying out its duties. The council consists of the state engineer, state health officer, director of the department of transportation, director of the game and fish department, the commerce commissioner, and director of the department of environmental quality, who serve as ex officio members. The state geologist shall serve as the executive secretary for the council. Additional members on the council are:
  - a. A representative of county government, appointed by the governor;
  - b. A representative of city government, appointed by the governor;
  - c. A representative of the agricultural community, appointed by the governor;
  - d. Two senators, appointed by the majority leader of the senate of the legislative assembly; and
  - e. Two representatives, appointed by the majority leader of the house of representatives of the legislative assembly.
2. Each appointed member of the council shall serve a four-year term. The governor may fill a vacancy in the membership of the council and remove an appointed member of the council for cause. The council members shall select a chairman from among the council members.
3. An appointed council member must be reimbursed by the commission for necessary travel and other expenses incurred in the performance of official duties.
4. The council shall hold at least one meeting per year and any other meetings deemed necessary by the chairman or a majority of the council.
5. The council shall:
  - a. Review site suitability and issue a report for a proposed high-level radioactive waste facility to the legislative assembly or commission.

- b. Review and make recommendations to the commission regarding rules and standards relating to high-level radioactive waste and the duties of the commission.
- c. Consider any other matter related to this chapter the council deems appropriate, and may make any recommendation to the commission concerning the administration of this chapter.
- d. Report its findings biennially to the commission and to the legislative management.

### **38-23-09. County zoning authority.**

A county zoning regulation may not prohibit a high-level radioactive waste disposal exploratory drilling permit or a high-level radioactive waste facility permitted by the commission, but may regulate the size, scope, and location.

**SECTION 4.** Chapter 38-24 of the North Dakota Century Code is created and enacted as follows:

#### **38-24-01. Definitions.**

As used in this chapter:

1. "Commission" means the industrial commission.
2. "Underground storage and retrieval facility" means a drilled, bored, or excavated device or installation providing for the subsurface emplacement and recovery of nonhydrocarbons.
3. "Nonhydrocarbons" include compressed air, nitrogen, and other gases and liquids not otherwise regulated by title 38.

#### **38-24-02. Jurisdiction of the commission and duties.**

The commission has jurisdiction and authority over any person or property, public or private, necessary to enforce this chapter. The commission acting through the office of the state geologist may:

1. Require:
  - a. Identification of ownership of all facilities and equipment used for the underground storage and retrieval of nonhydrocarbons.
  - b. The making and filing of all logs and reports on facility location, drilling, boring, excavating, and construction and the filing of samples, core chips, and complete cores, when requested, free of charge, in the office of the state geologist.
  - c. The drilling, boring, excavating, and construction of facilities in a manner preventing contamination and pollution of surface and ground water sources and the environment.
  - d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the commission.

- e. Metering or other measuring of all nonhydrocarbons injected, emplaced, stored, or retrieved from a facility regulated by this chapter.
  - f. A person operating a facility for the underground storage and retrieval of nonhydrocarbons in this state to keep and maintain complete and accurate records of the quantities and nature of material stored and retrieved, which records must be available to the commission or its agents at all times, and may require every such person to file prescribed reports with the commission.
  - g. Upon termination of the operation of a facility or activity regulated by this chapter, the operator of the facility to restore the surface as nearly as possible to its original condition and productivity.
2. Regulate:
  - a. The testing, exploration, drilling, boring, excavating, and construction of underground storage and retrieval.
  - b. Operations to assure the optimum performance of a facility regulated by this chapter.
3. Prescribe the nature, quantity, and source of nonhydrocarbons to be stored in or retrieved from a facility regulated by this chapter.
  4. Adopt and enforce rules and orders to effectuate the purposes of this chapter.

**38-24-03. Permit required.**

A person may not commence operations for the testing, exploration, excavating, drilling, boring, or construction of an underground storage and retrieval facility or the conversion of an existing facility for use in an activity regulated by this chapter, without obtaining a permit from the commission. A permit may be issued only after notice and hearing, and payment of a fee in an amount to be prescribed by the commission. A permit application must include:

1. A description of the activity to be permitted.
2. A detailed description of the nature of the nonhydrocarbons to be stored and retrieved.
3. A detailed description of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility.
5. A detailed description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility.
6. A detailed description of the monitoring system assuring the integrity of the facility and compliance with this chapter.
7. A detailed description of the reclamation and the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activity regulated by this chapter.

8. Any other information required by the commission.

#### **38-24-04. Denial of permit - Review.**

1. Following a hearing, the commission may deny an application if the commission determines the facility or activity poses a threat to ground or surface waters or the environment. A person denied a permit may appeal the denial in accordance with chapter 28-32.
2. All fees collected pursuant to this chapter, must be deposited in the general fund in the state treasury.
3. A permit required by this chapter is in addition to all other permits required by law.

#### **38-24-05. Action to restrain violation or threatened violation.**

The commission may bring action against a person violating or threatening to violate a provision of this chapter, or a rule, regulation, or order of the commission. The action must commence in the district court of the county where the violation occurred or is threatened. Without the filing of a bond or other undertaking by the commission, the court may issue an injunction, including a temporary restraining order, a preliminary injunction, or a temporary, preliminary, or final order restraining the person from continuing the violation or from carrying out the threat of violation.

#### **38-24-06. Penalties.**

1. A person that violates this chapter, or a rule, regulation, or order of the commission adopted under this chapter is subject to a civil penalty of not more than twelve thousand five hundred dollars for each violation and for each day the violation occurred.
2. It is a class C felony for a person, for the purpose of evading this chapter, or a rule, regulation, or order of the commission to:
  - a. Make or cause a false entry or statement in a report required by this chapter or by a rule, regulation, or order issued or adopted by the commission;
  - b. Make or cause a false entry in a record, account, or memorandum required by this chapter, or by any rule, regulation, or order of the commission;
  - c. Omit, or cause to be omitted, from a record, account, or memorandum, full, true, and correct entries as required by this chapter or by any rule, regulation, or order of the commission; or
  - d. Remove from this state or destroy, mutilate, alter, or falsify a record, account, or memorandum.
3. The civil penalties provided in subsection 1 are recoverable by civil action filed by the attorney general on behalf of the commission. The civil action must commence in the district court of the county in which:
  - a. The defendant resides;



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- b. Any defendant resides, if there is more than one defendant; or
  - c. The violation occurred.
4. The payment of penalties does not relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

**38-24-07. Administrative procedure and judicial review.**

A proceeding under this chapter for the issuance or modification of rules, including emergency orders relating to underground storage and retrieval and determining compliance with rules of the commission, must be conducted in accordance with chapter 28-32. If the commission determines an emergency requiring immediate action exists, the commission may issue an emergency order without notice or hearing, which is effective upon adoption. An emergency order may not remain in force for more than fifteen days. A person aggrieved by action of the commission, or by its rules or orders, may appeal to the district court of the county in which the person resides, or in Burleigh County, in accordance with chapter 28-32.

**SECTION 5. REPEAL.** Chapter 23-20.2 of the North Dakota Century Code is repealed.

Approved April 23, 2019

Filed April 24, 2019

# MOTOR VEHICLES

## CHAPTER 302

### HOUSE BILL NO. 1418

(Representative D. Ruby)  
(Senator Rust)

AN ACT to create and enact chapter 8-12 and section 39-01-01.2 of the North Dakota Century Code, relating to automated vehicle network companies and autonomous vehicle operations.

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

**SECTION 1.** Chapter 8-12 of the North Dakota Century Code is created and enacted as follows:

##### **8-12-01. Definitions.**

As used in the chapter:

1. "Autonomous vehicle" means a vehicle equipped with an automated driving system.
2. "Client" means a person requesting service from an on-demand autonomous vehicle network. The term includes a passenger, a shipper, as defined by section 41-07-02, a person entitled under the document, as defined by section 41-07-02, or similar individual or commercial enterprise.
3. "On-demand autonomous vehicle network" means a transportation service network that uses a software application or other digital means to dispatch or otherwise enable the prearrangement of transportation with autonomous vehicles for purposes of transporting persons or goods, including for-hire transportation, transportation for compensation, and public transportation.

##### **8-12-02. General provisions.**

1. Notwithstanding any other provision of law, a person may operate an on-demand autonomous vehicle network. An on-demand autonomous vehicle network may provide transportation of persons or goods, including:
  - a. For-hire transportation;
  - b. Public transportation; and
  - c. Transportation for multiple passengers who agree to share the ride.
2. An on-demand autonomous vehicle network may connect passengers to autonomous vehicles without human drivers in compliance with subdivision a of subsection 3 of section 39-01-01.2 exclusively, or subdivision b of

subsection 3 of section 39-01-01.2 as part of a digital network that also connects passengers to human drivers who provide transportation services, consistent with applicable law.

3. Unless otherwise provided in this chapter and notwithstanding any other provision of law, autonomous vehicles and automated driving systems without human drivers are governed by subsection 3 of section 39-01-01.2.
  - a. A state agency or political subdivision may not impose requirements, including performance standards specific to the operation of an autonomous vehicle or automated driving systems without human drivers, in compliance with subsection 3 of section 39-01-01.2.
  - b. A state or local agency or political subdivision may not impose a tax, fee, or other requirement specific to the operation of an autonomous vehicle that is in compliance with subsection 3 of section 39-01-01.2, an automated driving system, or an on-demand vehicle network. This prohibition does not affect vehicle registration and titling fees otherwise required by law.
4. This chapter may not be construed to modify, limit, or restrict any statutory provision affecting liability, including chapter 26.1-40, 26.1-41, 28-01.3, 32-03.2, or 39-16.1.

**SECTION 2.** Section 39-01-01.2 of the North Dakota Century Code is created and enacted as follows:

**39-01-01.2. Autonomous vehicle operations.**

1. As used in this section:
  - a. "Automated driving system" means hardware and software collectively capable of performing the entire dynamic driving task for the vehicle on a sustained basis when installed on a motor vehicle and engaged regardless of whether it is limited to a specific operational design domain.
  - b. "Autonomous vehicle" means a vehicle equipped with an automated driving system.
  - c. "Dynamic driving task" means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic within the vehicle's specific operational design domain, if any, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints.
  - d. "Human driver" means an individual with a valid license to operate a motor vehicle who manually exercises in-vehicle braking, accelerating, steering, and transmission gear selection input devices to operate a vehicle.
  - e. "Minimal risk condition" means a low-risk operating mode in which an autonomous vehicle operating without a human driver achieves a reasonably safe state, such as bringing the vehicle to a complete stop, upon experiencing a failure of the vehicle's automated driving system that renders the vehicle unable to perform the entire dynamic driving task.
  - f. "Operational design domain" means a description of the specific operating domain in which an automated driving system is designed to properly

- operate, including roadway types, speed range, environmental conditions, and other domain constraints.
2. An autonomous vehicle must be capable of operating in compliance with all applicable federal and state law, except to the extent exempted under applicable federal or state law, and may operate on the public highways of this state in full compliance with all vehicle registration, title, insurance, and all other applicable requirements under this title.
  3. An autonomous vehicle with automated driving systems engaged does not require a human driver to operate on the public highway if the autonomous vehicle is capable of achieving a minimal risk condition in case a system failure occurs which renders the automated driving system unable to perform the entire dynamic driving task relevant to the vehicle's intended operational design domain.
  4. An individual using an autonomous vehicle is not driving or in actual physical control of the autonomous vehicle and, therefore, is exempt from licensing requirements if:
    - a. The automated driving system is completing the entire dynamic driving task; and
    - b. The autonomous vehicle is capable of achieving a minimal risk condition if a system failure occurs that renders the automated driving system unable to perform the entire dynamic driving task relevant to the vehicle's intended operational design domain.
  5. This section may not be construed to modify, limit, or restrict any statutory provision affecting liability, including chapter 26.1-40, 26.1-41, 28-01.3, 32-03.2, or 39-16.1.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 303

### SENATE BILL NO. 2119

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 4 of section 39-01-15 of the North Dakota Century Code, relating to parking privileges for mobility-impaired individuals.

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

<sup>124</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 39-01-15 of the North Dakota Century Code is amended and reenacted as follows:

4. The director may issue, ~~for a fee of three dollars per year or part of a year,~~ a special identifying certificate to any mobility-impaired applicant upon submission by the applicant of a completed application and a written or electronic statement issued by a qualified physician, physician assistant, chiropractor, or an advanced practice registered nurse to the director that the applicant is a mobility-impaired person within the criteria of subsection 2. The director shall waive the requirement for a written or electronic statement from a qualified physician, physician assistant, chiropractor, or an advanced practice registered nurse if the applicant has previously submitted an application containing a certification from a qualified physician, physician assistant, chiropractor, or an advanced practice registered nurse that the applicant's impairment is not reversible. The application must include the information required by the director. The physician's, physician assistant's, chiropractor's, or advanced practice registered nurse's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate is valid for a period, not to exceed three years, as determined by the director. A physician, physician assistant, chiropractor, or an advanced practice registered nurse who provides a false statement that an individual is mobility impaired for the purpose of that individual obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed. A certificate issued under this subsection must be nine and one-half inches [24.13 centimeters] in height and three inches [7.62 centimeters] in width and must bear, in white on blue, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the director. The director shall adopt rules governing the issuance of the certificate. A temporary certificate, valid for an initial period not to exceed three months, may be issued by the director for a fee of three dollars upon application supported by a physician's, physician assistant's, chiropractor's, or an advanced practice registered nurse's statement. The director may issue a maximum of one additional temporary certificate for a fee of three dollars. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's, physician assistant's, chiropractor's, or an advanced practice registered nurse's statement that the extension is warranted. Temporary

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<sup>124</sup> Section 39-01-15 was also amended by section 1 of House Bill No. 1135, chapter 304.

certificates must be the same size as other certificates issued under this section and must be white on red. The director may issue a maximum of one additional certificate, if the applicant does not have number plates issued under section 39-04-10.2 or under subdivision j of subsection 2 of section 39-04-18, ~~for a fee of six dollars per certificate~~, to a mobility-impaired individual to whom a certificate has been issued under this subsection. The additional certificates may only be used by or on behalf of the mobility-impaired individual.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 304

### HOUSE BILL NO. 1135

(Representatives Boschee, Adams, Fegley, Hanson, Hatlestad, M. Johnson, Magrum, Pyle, Strinden)  
(Senators Bakke, Clemens, Dwyer)

AN ACT to amend and reenact subsections 9 and 10 of section 39-01-15 and section 39-04-10.2 of the North Dakota Century Code, relating to parking spaces for the mobility impaired; and to provide a penalty.

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

<sup>125</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 39-01-15 of the North Dakota Century Code is amended and reenacted as follows:

9. a. If a public or private entity designates parking spaces for use by a motor vehicle operated by a mobility-impaired individual, those reserved accessible parking, the spaces must comply with the requirements of the Americans with Disabilities Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36] and must be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, each reserved space must be indicated by an official sign approved by the director bearing the internationally accepted symbol of access international symbol of accessibility for the mobility impaired. The sign must indicate that unauthorized use of the space is a nonmoving violation for which a fee of one hundred dollars must be imposed.
- b. For particular events any event, a public or a private entity temporarily may reserve additional accessible parking spaces for use by motor vehicles operated by a mobility-impaired individual. In that case, each temporarily reserved space must be indicated by a sign or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility-impaired parking space, bearing the international symbol of accessibility for the mobility impaired at least four hours before the event.
- c. A parking space clearly identified as reserved for the mobility impaired is considered designated and reserved for the mobility impaired and is sufficient basis for the enforcement of this section: if the parking space has two of the following requirements:
  - (1) Blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space:

<sup>125</sup> Section 39-01-15 was also amended by section 1 of Senate Bill No. 2119, chapter 303.

- (2) A sign bearing the international symbol of accessibility for the mobility impaired; or
- (3) Notice that unauthorized use of the space is a nonmoving violation for which a fee of one hundred dollars must be imposed.
- d. Except for a temporarily reserved parking space for the mobility impaired, a sign posted must be immovable.
- e. A law enforcement officer shall enforce this section in any parking lot or parking facility, whether publicly or privately owned.

**SECTION 2. AMENDMENT.** Subsection 10 of section 39-01-15 of the North Dakota Century Code is amended and reenacted as follows:

10. If the designated ~~mobility-impaired~~ parking spaces for mobility-impaired individuals are occupied or ~~unavailable/inaccessible~~, a motor vehicle displaying the distinguishing certificate specified in subsection 4, license plates issued under section 39-04-10.2, or a disabled veteran plate issued under subdivision j of subsection 2 of section 39-04-18 may park at an angle and occupy two standard parking spaces.

**SECTION 3. AMENDMENT.** Section 39-04-10.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-10.2. Special plates for mobility-impaired ~~persons~~individuals.**

The director may issue, without charge, upon application and payment of the regular license fee, plates marked with the ~~internationally accepted symbol of access~~international symbol of accessibility for the mobility impaired, to ~~any~~ a motor vehicle owner ~~who possesses~~possessing a parking certificate issued under subsection 4 of section 39-01-15. This section is not applicable to ~~applicants who possess~~an applicant possessing more than one parking certificate issued under subsection 4 of section 39-01-15.

Approved March 21, 2019

Filed March 22, 2019



## CHAPTER 305

### SENATE BILL NO. 2103

(Government and Veterans Affairs Committee)  
(At the request of the Highway Patrol)

AN ACT to amend and reenact section 39-03-03 of the North Dakota Century Code, relating to patrolmen being deemed probationary employees for a period of up to twelve months; and to amend and reenact subsection 3 of section 39-03-13 of the North Dakota Century Code, relating to the power of the superintendent to delegate authority for disciplinary action within the highway patrol.

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

**SECTION 1. AMENDMENT.** Section 39-03-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-03-03. Patrolmen - Appointment - Removal - Duties.**

The superintendent, the assistant superintendent, and the patrolmen constitute the highway patrol. The highway patrol shall enforce the provisions of the laws of this state relating to the protection and use of highways and shall patrol the highways and cooperate with sheriffs and police in enforcing the laws regulating the operation of vehicles and the use of highways. All patrolmen and the assistant superintendent must be appointed by the superintendent. Each patrolman so appointed is deemed a ~~temporary appointee~~ probationary employee for an initial period of ~~twelve~~ six months, during which period the patrolman must be placed under probationary training and service and is subject to an extension of an additional period of six months or dismissal at the will of the superintendent or the superintendent's designee. At the end of the ~~twelve-month~~ probationary period, a ~~temporary appointee~~ probationary employee must either be given a permanent appointment by the superintendent taken off probationary status or must be automatically dismissed. ~~The assistant superintendent and patrolmen who have received a permanent appointment are~~ A nonprobationary employee employed in a regular, classified position is subject to removal for cause by the superintendent or the superintendent's designee, but must be permitted ~~to~~ the employee may appeal a dismissal under chapter 54-44.3; provided that the removal of the assistant superintendent from ~~that person's~~ the assistant superintendent position does not entitle that person to appeal the removal unless that person also is also dismissed from the patrol.

**SECTION 2. AMENDMENT.** Subsection 3 of section 39-03-13 of the North Dakota Century Code is amended and reenacted as follows:

3. The superintendent or the superintendent's designee may take reasonable disciplinary action against members of the patrol for inefficiency, misconduct, insubordination, or violation of an established rule, whenever the superintendent or the superintendent's designee deems the actions necessary, provided that:
  - a. When demotion in rank is ~~summarily~~ summarily ordered summarily against a member of the patrol as a disciplinary measure, to be limited to a one-grade reduction in rank, the order is appealable under chapter 54-44.3.

- b. When a reduction in pay of a member of the patrol is summarily ordered summarily as a disciplinary measure, it must be limited to one year's duration and the order is appealable under chapter 54-44.3.
- c. Suspension of pay for a member of the patrol for a period not exceeding seven days may be summarily ordered summarily as a disciplinary measure, but an order for suspension of pay for a longer period is appealable under chapter 54-44.3.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 306

### HOUSE BILL NO. 1223

(Representatives Heinert, K. Koppelman, Meier, Roers Jones)  
(Senators Oban, Unruh)

AN ACT to create and enact a new subsection to section 39-03-09 of the North Dakota Century Code, relating to the powers of the highway patrol to exercise general police powers; and to amend and reenact subsections 12 and 16 of section 39-03-09 of the North Dakota Century Code, relating to the powers of the highway patrol.

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

<sup>126</sup> **SECTION 1.** A new subsection to section 39-03-09 of the North Dakota Century Code is created and enacted as follows:

To exercise general police powers over any violation of law committed on public or private property when requested by another law enforcement agency.

<sup>127</sup> **SECTION 2. AMENDMENT.** Subsections 12 and 16 of section 39-03-09 of the North Dakota Century Code are amended and reenacted as follows:

12. To exercise general police powers over all violations of law committed in their presence ~~upon any highway and within the highway right of way~~ or when in pursuit of any actual or suspected law violator.
16. Of a peace officer when responding to a ~~request~~ call for emergency assistance requiring an immediate response ~~regardless of whether the request is being made by another law enforcement agency or officer.~~ Following a call for emergency assistance which occurs outside state-owned or state-leased property, a highway, or the highway right of way, notification must be provided to the local law enforcement agency having primary jurisdiction.

Approved March 26, 2019

Filed March 27, 2019

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<sup>126</sup> Section 39-03-09 was also amended by section 2 of House Bill No. 1223, chapter 306.

<sup>127</sup> Section 39-03-09 was also amended by section 1 of House Bill No. 1223, chapter 306.

## CHAPTER 307

### HOUSE BILL NO. 1094

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to amend and reenact section 39-04-10.3 of the North Dakota Century Code, relating to personalized plates for motor vehicles.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-04-10.3. Personalized plates.**

At the request of a registrant, the department may provide special license plates marked with not more than seven numerals, letters, ~~or ampersands~~, or combinations of numerals; and letters, ~~and ampersands~~, upon application for a special license plate and payment of an additional fee of twenty-five dollars per registration period, unless the plate is a gold star license plate or a prisoner of war license plate, then there is no additional charge. A personal plate containing a restricted character may not be renewed. The department shall make the special license plates authorized by this section available for motor vehicles registered under section 39-04-10.6, trailers, travel trailers, and motorcycles. The fee for the special license plates issued under this section for vehicles registered under section 39-04-10.6 is a one-time fee of one hundred dollars. The special license plates for motorcycles may contain not more than six numerals, letters, ~~or ampersands~~, or a combination of not more than six numerals; and letters, ~~and ampersands~~. In the event of sale or transfer of the vehicle, the owner ~~must~~shall remove the special license plates in accordance with section 39-04-36. Upon payment of the applicable transfer fee, the special license plates may be transferred to a replacement motor vehicle.

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 308

### SENATE BILL NO. 2321

(Senators Klein, Burckhard, Heckaman)  
(Representatives Boe, Fegley, Vigessaa)

AN ACT to amend and reenact section 39-04-10.16 of the North Dakota Century Code, relating to special vehicle license plates for volunteer emergency responders and firefighters; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.16 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-04-10.16. Special vehicle license plates for volunteer emergency responders and volunteer firefighters.**

1. As used in this section:
  - a. "Fire department" means a certified city fire department, certified rural fire department, or certified fire protection district that has filed a certificate of existence under section 18-04-02.
  - b. "Volunteer emergency responder" means an emergency medical services provider certified by the state department of health and the individual's squad leader for a continuous period exceeding two years and who receives an annual compensation of less than ten thousand dollars.
  - c. "Volunteer firefighter" means an active member in good standing with a North Dakota fire department who has had a continuous membership for a period exceeding two years and receives an annual compensation of less than ten thousand dollars from the fire department.
2. Upon application, the director shall issue red personalized plates to volunteer emergency responders and volunteer firefighters at no initial or annual cost to the volunteers. ~~Volunteers shall include fire fighters and emergency medical responders.~~ Qualified applicants are eligible to receive one set of plates. Plates may not be displayed on a vehicle with a registered gross weight exceeding twenty thousand pounds [9071.85 kilograms]. The first three digits of the plate are the last three digits of the zip code where the volunteer's department is located. The remaining space may contain up to three characters of the volunteer's choosing. This plate serves as an entrance pass to all North Dakota state parks. In cooperation with the volunteer organizations, the director shall designate qualifications and verification procedures for the plates issued under this section.
3. On termination of the registrant's eligibility, the registrant shall return the plates to the director, who shall reissue for a fee of not more than five dollars, and upon payment of applicable registration fees, another number plate to which that registrant is entitled under this chapter.

4. If a registrant fails to return the plates to the director, the director, upon notification of the registrant's ineligibility, may revoke the plates and reissue for a fee of not more than five dollars, and upon payment of applicable registration fees, another number plate for which the registrant is entitled under this chapter.

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

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 309

### HOUSE BILL NO. 1291

(Representatives Mock, D. Johnson, Kempenich, Owens, D. Ruby, Vigesaa, Weisz)  
(Senators Bakke, Clemens, Dwyer, G. Lee, Oehlke)

AN ACT to amend and reenact section 39-04-12, subsection 1 of section 39-04-18, and subsection 4 of section 39-04-19 of the North Dakota Century Code, relating to semitrailer and farm trailer plates; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 39-04-12 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-12. Contents of number plates - Size of letters and numerals on plates - Reflectorized - Tabs or stickers -Additional fee.**

1. Number plates must be of metal or other suitable material bearing the name of the state, either in full or by abbreviation, the number of the year, the slogan "Peace Garden State" and a distinctive number for assignment to each vehicle. The distinctive number may be in figures or a combination of figures and letters and must be of a size clearly distinguishable by law enforcement officers and individuals generally. To reduce highway accidents at night all number plates must be legible for a minimum distance of one hundred feet [30.48 meters] to an approaching motorist by day or night with lawful headlight beams and without other illumination. Each plate must be treated with a reflectorized material according to the specifications prescribed by the department. The department shall furnish for each annual registration a year plate, tab, or sticker to designate the year registration. The plate, tab, or sticker must show the registration year for which issued, and is valid only for that year.
2. ~~The department, in its discretion, may provide to an owner of a trailer that is operated, offered for lease, or rented to the public, number plates that are for a period of not more than six consecutive years and which are exempt from the requirements of annual validation evidence. The registration fees for the trailer may be paid for the entire period for which the plates are issued, or the fee may be paid for the first year of the issue and a corporate surety bond may be filed in the sum the department determines reasonable and adequate in the circumstances, conditioned that the owner will pay the annual fee at the beginning of each annual registration period. The department shall transfer to a replacement trailer number plates issued pursuant to this subsection along with any unused registration fees. If the owner has disposed of the trailer and is not replacing the trailer, upon surrender of the number plates the department shall issue a refund of the registration fees paid for any unused registration year.~~
3. The department may provide to an owner of a fleet of one hundred or more vehicles number plates that are valid for as many as six consecutive years and that are exempt from the requirements of evidence of annual validation. The registrant shall file with the department a corporate surety bond in an

amount the department determines to be reasonable and adequate, and conditioned that the owner will pay the annual fee at the beginning of each annual registration period for which the number plates are valid.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Except as provided in this section, ~~every~~ a motor vehicle as defined in section 39-01-01, ~~trailer or semitrailer designed to be towed by a truck or truck tractor, and farm trailer or a trailer~~ operated or intended to be operated upon any highway, road, or street in this state must be registered annually with the department. Any
- b. A semitrailer or a farm trailer operated or intended to be operated upon a highway, road, or street in this state must be registered with the department either annually or permanently, at the discretion of the registrant.
- c. A vehicle being operated on highways, roads, or streets of this state must display license plates as furnished by the department upon payment of the fees prescribed in this chapter.
- d. Upon satisfactory proof to the department that a motor vehicle owned by a resident of this state was not used upon any of the highways of this state in any one or more years, the motor vehicle may be registered upon payment of the registration fee for the current year.

Any

- e. A resident of the state of North Dakota, serving in the armed forces of the United States for a period of time greater than one year, may relicense any motor vehicle owned by the veteran without paying any fee or ~~penalties~~ penalty for the intervening years when the vehicle was not licensed, providing the veteran shows by suitable affidavit that the vehicle was not in use during any year in which it was not licensed. The vehicle must be licensed for the license fee applicable to the month of the year in which application for license is made.

**SECTION 3. AMENDMENT.** Subsection 4 of section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

4. Every
  - a. Each trailer, ~~except a~~ semitrailer, ~~and or~~ farm trailer, required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. ~~Every~~ A 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.
  - b. A semitrailer or farm trailer required to be registered under this chapter must be furnished:
    - (1) Permanent registration plates upon the payment of a permanent registration fee of one hundred twenty dollars. The permanent registration is valid until ownership of the semitrailer or farm trailer is



transferred, assigned, or if the semitrailer is destroyed or otherwise completely removed from the service of the owner; or

(2) Annual registration upon the payment of a twenty dollar annual fee.

- c. 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.

**SECTION 4. APPLICATION.** An owner of a semitrailer or farm trailer newly registered after August 1, 2019, shall pay the fees provided in section 3 of this Act. The owner of a currently registered semitrailer or farm trailer on August 1, 2019, shall renew registration and pay the fees provided in section 3 of this Act before January 1, 2020. The owner of a semitrailer or farm trailer currently registered under subsection 2 of section 39-04-12 as of August 1, 2019, shall renew registration and pay the fees provided in section 3 of this Act before January 1, 2020. That owner is entitled to receive a reduction in the fee of previously paid unused registration fees, except for fees paid for the 2019 registration year.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 310

### HOUSE BILL NO. 1093

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to create and enact section 39-04-14.4 of the North Dakota Century Code, relating to motorcycle registration renewals; and to amend and reenact section 39-04-14 of the North Dakota Century Code, relating to motorcycle registration.

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

**SECTION 1. AMENDMENT.** Section 39-04-14 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-04-14. Renewal of registration.**

Every vehicle registration, except those described in ~~section~~sections 39-04-14.1 and 39-04-14.4, under this chapter expires on December thirty-first each year and must be renewed annually upon application by the owner and by payment of the fees required by law, such renewal to take effect on the first day of January each year. An owner who has made proper application for renewal of registration of a vehicle previous to January first but who has not received the number plates, plate, or registration card for the ensuing year is entitled to operate or permit the operation of such vehicle upon the highways upon displaying thereon the number plates or plate issued for the preceding year for such time, to be prescribed by the department, as may be required for the issuance of the new plates. If a previously registered motor vehicle whose registered gross weight exceeds twenty thousand pounds [9071.84 kilograms] is purchased during the period the vehicle's registration in this state is expired, the registration fee must be prorated on a monthly basis from the date of purchase to January first.

**SECTION 2.** Section 39-04-14.4 of the North Dakota Century Code is created and enacted as follows:

##### **39-04-14.4. Renewal of motorcycle registration.**

Every motorcycle registration under this chapter expires on March thirty-first and must be renewed every year upon application by the owner and by payment of the fees required by law. The renewal takes effect on the first day of April. The department may prorate the initial registration fee.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 311

### SENATE BILL NO. 2061

(Senators Kreun, Schaible, Wardner)  
(Representatives Owens, Steiner, Delzer)

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to a road use fee for electric and hybrid vehicles; and to provide for a legislative management study.

#### 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:

##### **Electric and plug-in hybrid vehicle road use fee - Definitions.**

1. In addition to all other fees required under this chapter for registration of a motor vehicle, the department shall collect at the beginning of each annual registration period:
  - a. An electric vehicle road use fee of one hundred twenty dollars for each electric vehicle registered.
  - b. A plug-in hybrid vehicle road use fee of fifty dollars for each plug-in hybrid vehicle registered.
  - c. An electric motorcycle road use fee of twenty dollars for each electric motorcycle registered.
2. As used in this section:
  - a. "Electric motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider, is designed to travel on not more than three wheels in contact with the ground, and is propelled by an electric motor powered by a battery or other electric device incorporated into the vehicle and not propelled by an engine powered by the combustion of a hydrocarbon fuel, including gasoline, diesel, propane, or liquid natural gas.
  - b. "Electric vehicle" means a vehicle propelled by an electric motor powered by a battery or other electric device incorporated into the vehicle and not propelled by an engine powered by the combustion of a hydrocarbon fuel, including gasoline, diesel, propane, or liquid natural gas.
  - c. "Plug-in hybrid vehicle" means a vehicle drawing propulsion energy from an internal combustion engine, an energy storage device, and a receptacle to accept grid electricity.
3. The department shall deposit any moneys collected under this section into the highway tax distribution fund.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - ELECTRIC VEHICLE INFRASTRUCTURE NETWORK.** During the 2019-20 interim, the legislative management shall consider studying current methods, using the electric vehicle infrastructure coalition, led by the department of transportation, to collaborate with the North Dakota utility industry, and North Dakota electric vehicle stakeholder groups, to design a jointly owned public and private network of electric vehicle infrastructure to support both commercial and noncommercial vehicles and make recommendations regarding electric vehicle charging infrastructure. The study must include the evaluation of the relative costs and benefits associated with various options for electric vehicle infrastructure support and estimate the future annual economic impact. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 312

### HOUSE BILL NO. 1055

(Representatives Heinert, Meier)  
(Senator Dever)

AN ACT to amend and reenact subsection 3 of section 39-05-17.2 of the North Dakota Century Code, relating to motor vehicle body damage disclosure.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 39-05-17.2 of the North Dakota Century Code is amended and reenacted as follows:

3. As used in this section, "motor vehicle body damage" means a change in the body or structure of a motor vehicle, generally resulting from a vehicular crash or accident, including loss by fire, vandalism, weather, or submersion in water, resulting in damage to the motor vehicle which equals or exceeds the greater of ~~eighteen thousand dollars or forty-two and one-half percent~~ ~~eighteen thousand dollars or forty-two and one-half percent~~ of the predamage retail value of the motor vehicle as determined by the national automobile dealers association official used car guide. The term does not include body or structural modifications, normal wear and tear, glass damage, hail damage, or items of normal maintenance and repair.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 313

### HOUSE BILL NO. 1407

(Representatives Grueneich, Blum, Bosch, Howe, Schobinger)  
(Senator Meyer)

AN ACT to amend and reenact sections 39-05-17 and 39-05-20 of the North Dakota Century Code, relating to the delivery and issuance of certificates of vehicle title; and to provide a penalty.

#### 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.**

1. The owner or transferor of a motor vehicle who transfers title to a vehicle shall endorse an assignment and warranty of title upon the certificate of title for the vehicle. The owner or transferor shall include on the assignment and warranty of title the name of the transferee and the selling price of the vehicle if applicable.
2. If legal title passes to the transferee, the owner shall deliver the endorsed certificate of title to the transferee within ~~fifteen~~thirty days.
3. If legal title passes to a lienholder rather than the transferee, the transferee shall endorse a statement that the lienholder holds the lien and shall send the certificate of title to the department with an application for a new certificate of title showing the names of the new owner and lienholder. The certificate of title when issued must be sent by the department to the lienholder or the department may use an electronic lien notification procedure in lieu of sending a certificate of title to a lienholder.
4. Within thirty days, the transferee shall deliver the endorsed certificate of title to the department with a transfer fee of five dollars, and shall make an application for a new certificate of title. In addition to any other penalty, the registration to a motor vehicle may be suspended or revoked if the transferee fails to present the endorsed certificate of title to the department for transfer and make application for a new certificate of title within thirty days. The department shall deliver the new certificate of title to the lienholder with priority. If there is no lienholder, delivery must be made to the owner.
5. A violation of this section by an owner, lienholder, or transferee is a class B misdemeanor.

**SECTION 2. AMENDMENT.** Section 39-05-20 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-20. Transferee may obtain new certificate of title upon inability to obtain old certificate - Proof of ownership - Appeal.**

1. When the transferee of a vehicle is unable to obtain a properly assigned certificate of title for a vehicle, and makes application for a new certificate and presents satisfactory proof of ownership, the department may cancel the old certificate and issue a new certificate to the transferee, provided that the department may not issue a certificate of title for a manufactured home with respect to which there has been recorded an affidavit of affixation under section 47-10-27. Satisfactory proof of ownership must include compliance by the transferee with the procedures outlined in title 35.
  - a. If the transferee is an insurer that has paid a total loss claim on a vehicle but the payment has not satisfied all liens of record on the vehicle, the transferee is not required to comply with the procedures outlined in title 35 to establish satisfactory proof of ownership and the department may cancel the old certificate of title and issue a new certificate to the insurer free and clear of all liens and claims of ownership.
  - b. If the transferee is a tax exempt organization under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] to which a vehicle has been donated, the transferee shall provide an affidavit providing proof the vehicle was donated.
  - c. If the transferee is a licensed motor vehicle dealer that, at the request of an insurer, took possession of a vehicle that is the subject of an insurance claim but for which a total loss claim is not paid by the insurer and the vehicle has been in the possession of the dealer for more than thirty days, the necessary satisfactory proof of ownership includes only proof the dealer made at least two written attempts by certified mail with return receipt addressed to the owner of record and any known lienholder to have the vehicle removed from the dealer's facility, upon payment of applicable charges. If satisfactory proof of ownership is established, the department may cancel the old certificate of title and issue a new certificate to the licensed motor vehicle dealer free and clear of all liens and claims of ownership.
  - d. If the transferee is an individual, satisfactory proof of ownership must include that the transferee has paid for the vehicle, and that the transferee made at least two written attempts by certified mail with return receipt addressed to the owner of record and any known lienholder to obtain the certificate of title. If satisfactory proof of ownership is established, the department shall cancel the old certificate of title and issue a new certificate to the individual, subject to any existing lien.
2. The department may establish procedures for determining satisfactory proof of ownership of a vehicle in those cases when the department is unable to determine the legal owner of record. The procedures may include determining the validity of any liens on a certificate of title. Any person aggrieved by a decision of the department as to ownership of a vehicle may appeal that decision to the district court under chapter 28-32.
- 2-3. A person holding a certificate of title whose interests in the vehicle have been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the department upon request of the department. The delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate. The action of the

department in issuing a new certificate of title as provided herein is not conclusive upon the rights of the owner or lienholder listed in the old certificate.

Approved May 1, 2019

Filed May 2, 2019



## CHAPTER 314

### HOUSE BILL NO. 1415

(Representatives Karls, Bosch, Martinson, Meier, Paulson, Satrom)

AN ACT to create and enact section 39-06-01.3 of the North Dakota Century Code, relating to compliance with federal selective service system requirement.

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

**SECTION 1.** Section 39-06-01.3 of the North Dakota Century Code is created and enacted as follows:

#### **39-06-01.3. Compliance with federal selective service requirement.**

1. Upon submission of an application for an initial, renewal, or duplicate instruction permit, operator's license, or a nondriver identification card by a man at least eighteen years of age and under the age of twenty-six, the department shall provide for the registration of the applicant with the selective service system.
2. The department shall provide language on the application informing the applicant his signature on the application serves as an acknowledgment the applicant already has registered with the selective service system or the applicant consents to registration.
3. An applicant who objects to registration for conscientious, religious, or other grounds may contact the selective service system for alternative options.
4. The department shall forward the applicant's necessary personal information to the selective service system for registration.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 315

### SENATE BILL NO. 2157

(Senators Schaible, Wardner)  
(Representatives Rohr, Schmidt)

AN ACT to amend and reenact section 39-06-05 of the North Dakota Century Code, relating to the age of students enrolled in a driver's training course.

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

**SECTION 1. AMENDMENT.** Section 39-06-05 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-05. Restricted instruction permit - When instruction permit not required - Driver's training course.**

1. The director upon receiving proper application may issue a restricted instruction permit effective for a school year or more restricted period to an applicant who is at least fourteen years of age and enrolled in a commercial driver training course that includes practice driving and which is approved by the director of the highway patrol under chapter 39-25. The restricted instruction permit entitles the permittee when the permittee has the permit in the permittee's immediate possession to operate a motor vehicle with an approved instructor occupying a seat beside the permittee and on a designated highway or within a designated area.
2. Any
  - a. Subject to subdivision b. any student who is at least fourteen years of age and enrolled in behind-the-wheel driver's training through a high school program approved by the superintendent of public instruction may operate a motor vehicle, under the supervision of a driver training instructor certified by the superintendent of public instruction, without a permit or license to operate a motor vehicle, if the school district sponsoring the driver's training program has an insurance policy covering any damage that may be done by a student while operating the vehicle and proof of coverage is filed with the superintendent of public instruction by the school district's insurance carrier. The insurance coverage must be in the amount required under section 39-16-1-02 to establish proof of financial responsibility.
  - b. A student may not enroll in a driver's training course through a high school program approved by the superintendent of public instruction unless the student will be at least fourteen years of age by the completion date of the classroom portion of the driver's training course. A student may not participate in the behind-the-wheel driver's training portion of the driver's training course until the student is at least fourteen years of age. A student must complete the driver's training course's required amount of behind-the-wheel driver's training before successfully completing the course.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 316

### SENATE BILL NO. 2194

(Senators Dwyer, Cook)  
(Representatives Heinert, Porter)

AN ACT to amend and reenact subdivision c of subsection 2 of section 39-06-14.1 of the North Dakota Century Code, relating to motorcycle operator's licenses and motorized bicycles.

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

**SECTION 1. AMENDMENT.** Subdivision c of subsection 2 of section 39-06-14.1 of the North Dakota Century Code is amended and reenacted as follows:

- c. Applicants fourteen or fifteen years of age may be issued a motorcycle learner's permit if the applicant is enrolled in or has completed an approved motorcycle safety course. Applicants for a motorcycle operator's license who are under sixteen years of age must hold an initial learner's permit for at least two months before applying for a class M operator's license, must have completed an approved motorcycle safety course, and must hold a valid motorcycle learner's permit at the time of application. The director may waive the skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director. Any person under sixteen years of age who holds a permit or license may not operate a motorcycle powered with an engine in excess of ~~two~~five hundred ~~fifty~~ten cubic centimeters displacement. Evidence that the applicant has satisfactorily completed a motorcycle safety course which meets the minimum requirements of the motorcycle safety foundation must accompany the application.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 317

### HOUSE BILL NO. 1327

(Representatives Paur, Hatlestad, Satrom)  
(Senators Clemens, Dotzenrod)

AN ACT to amend and reenact subsection 2 of section 39-06.1-06 of the North Dakota Century Code, relating to the fee for failure to stop at a stop sign; and to provide a penalty.

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

<sup>128</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
  - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, or 39-10-42, 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, a fee of twenty-five dollars.
  - d. A violation of subsection 1 of section 39-12-02, section 39-08-23, or section 39-08-25, a fee of one hundred dollars.
  - e. A violation of subdivision d of subsection 1 of section 39-12-04, a fee of one hundred dollars.
  - f. A violation of subsection 1 of section 39-04-37 by an individual by becoming a resident of this state, a fee of one hundred dollars.
  - g. A violation of subsection 2 of section 39-10-21.1, a fee of two hundred fifty dollars.
  - h. A violation of section 39-10-59, a fee of five hundred dollars.
  - i. A violation of section 39-09-01, a fee of thirty dollars.
  - j. A violation of section 39-09-01.1, a fee of thirty dollars.
  - k. A violation of section 39-10-46 or 39-10-46.1, a fee of one hundred dollars.
  - l. A violation of subsection 1 of section 39-08-20, one hundred fifty dollars for a first violation and three hundred dollars for a second or subsequent violation in three years.

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<sup>128</sup> Section 39-06.1-06 was also amended by section 2 of House Bill No. 1405, chapter 327.

m. A violation of section 39-10-24 or 39-10-44, a fee of forty dollars.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 318

### HOUSE BILL NO. 1058

(Representatives Johnston, Marschall, Becker, Schobinger, B. Koppelman, M. Ruby,  
Jones, Vigesaa, Kasper, D. Ruby)  
(Senators Hogue, Osland)

AN ACT to amend and reenact section 39-06.1-08 of the North Dakota Century Code, relating to nonmoving violations; and to repeal section 39-10-51 of the North Dakota Century Code, relating to unattended motor vehicles.

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

**SECTION 1. AMENDMENT.** Section 39-06.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-08. Nonmoving violation defined.**

For the purposes of section 39-06.1-06, a "nonmoving violation" means:

1. A violation of section 39-04-11, subsection 1 of section 39-04-37 by an individual by becoming a resident of this state, subsection 4 of section 39-06-17, and section 39-06-44, 39-06-45, 39-10-47, 39-10-49, 39-10-50, ~~39-10-51~~, 39-10-54.1, 39-21-08, 39-21-10, 39-21-11, or 39-21-14, or a violation of any municipal ordinance equivalent to the foregoing sections.
2. A violation, discovered at a time when the vehicle is not actually being operated, of section 39-21-03, 39-21-05, 39-21-13, 39-21-19, 39-21-32, 39-21-37, 39-21-39, or 39-21-44.2, or a violation of any municipal ordinance equivalent to the foregoing sections.

**SECTION 2. REPEAL.** Section 39-10-51 of the North Dakota Century Code is repealed.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 319

### HOUSE BILL NO. 1179

(Representatives Roers Jones, Beadle, Boschee, Heinert)  
(Senators J. Lee, Oban, Rust)

AN ACT to amend and reenact subsection 4 of section 39-06.1-10 and section 39-06.1-11 of the North Dakota Century Code, relating to the issuance of temporary restricted licenses to operators participating in the twenty-four seven sobriety program.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4. a. If the director is informed by a court that an individual 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, shall suspend that individual's operator's license 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 driving privileges must be suspended and may be restored only after ~~that individual~~the offender 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. The offender must receive a temporary restricted license during the suspension period, in accordance with section 39-06.1-11.

**SECTION 2. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-06.1-11. Temporary restricted license - Ignition interlock device.**

1. Except as provided under subsection 2 or 3, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.
2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application

of the offender the director may issue a temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven sobriety program under chapter 54-12, the director ~~may~~shall issue a temporary restricted license that takes effect after fourteen days of the suspension have been served if the driver is not subject to any unrelated suspension or revocation.

3. ~~The director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a~~A temporary restricted license ~~may~~must be issued in accordance with subsection 7 if the offender is participating in and compliant with the twenty-four seven sobriety program under chapter 54-12 or if the offender has not committed an offense for a period of one year before the date of the filing of a written application. The application must be accompanied by:
  - a. Proof of financial responsibility and a report from an appropriate licensed addiction treatment program and, if prescribed, proof of compliance with attendance rules in an appropriate licensed addiction treatment program; or
  - b. If the offender is participating in the drug court program or other court-ordered treatment or sobriety program, a recommendation from the district court.
4. For a temporary restricted license under subsection 3, the director may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may require ~~that~~ an ignition interlock device be installed in the offender's vehicle and may require the applicant to submit proof of attendance at a driver training course approved by the director. The director may impose additional conditions as reasonably necessary to ensure compliance.
5. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 4 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
6. a. In addition to any restrictions authorized under section 39-06-17, the director may impose any of the following conditions upon the use of a temporary restricted license issued under this section for the use of a motor vehicle by the offender:
  - (1) To use during the licensee's normal working hours;
  - (2) To use for attendance at an appropriate licensed addiction treatment program or a treatment program ordered by a court; or
  - (3) To use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender.



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- b. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
  - c. This section does not limit the director's authority to cancel a temporary restricted license for good cause.
7. If an offender has been charged with, or convicted of, a second or subsequent violation of section 39-08-01 or equivalent ordinance, or if the offender's license is subject to suspension under chapter 39-20 and the offender's operator's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted license to the offender upon the restriction the offender participate in the twenty-four seven sobriety program under chapter 54-12. The offender shall submit an application to the director for a temporary restricted license along with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program to receive a temporary restricted license.
  8. If the director denies a temporary restricted license under this section, or denies a request for a hearing under subsection 4, the applicant may appeal within thirty days after the date of the decision by filing a notice of appeal in the district court in the county where the applicant resides and by serving the notice of appeal on the director. On appeal the district court shall review the application and may authorize presentation of additional evidence.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 320

### HOUSE BILL NO. 1098

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to create and enact a new subsection to section 39-06.2-06 of the North Dakota Century Code, relating to commercial driver's licenses; and to amend and reenact subdivision b of subsection 6 of section 39-06.2-07 of the North Dakota Century Code, relating to commercial learner's permits.

#### 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:

In accordance with title 49, Code of Federal Regulations, part 384, section 230, the department may not issue a commercial driver's license to an individual who obtains a commercial learner's permit unless the individual complies with title 49, Code of Federal Regulations, part 380, subpart F.

<sup>129</sup> **SECTION 2. AMENDMENT.** Subdivision b of subsection 6 of section 39-06.2-07 of the North Dakota Century Code is amended and reenacted as follows:

- b. The commercial learner's permit may not be issued for a period to exceed one hundred eighty days. ~~The commercial learner's permit may be renewed for an additional one hundred eighty days without requiring the individual to retake the knowledge test year.~~ After this initial period, the director may issue a letter of authority that authorizes the applicant to drive to a driver's license office, complete the road test, and return home, or the individual may retake the knowledge test and be issued another commercial learner's permit valid for one hundred eighty days ~~year~~. The holder of a permit, unless otherwise disqualified, may drive a commercial motor vehicle only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. A holder of a permit is not eligible for a license until that individual has had the permit issued for at least fourteen days.

Approved April 8, 2019

Filed April 9, 2019

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<sup>129</sup> Section 39-06.2-07 was also amended by section 1 of Senate Bill No. 2121, chapter 321.

## CHAPTER 321

### SENATE BILL NO. 2121

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 1 of section 39-06.2-07 and subsections 15 and 16 of section 39-06.2-10 of the North Dakota Century Code, relating to commercial vehicle driver's licenses.

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

<sup>130</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-06.2-07 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual may not be issued a commercial driver's license unless that individual is a resident of this state; has passed a knowledge and skills test that may include a skills test or knowledge test administered by another state or skills test or knowledge test results electronically submitted by another state, for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 CFR part 383, subparts G and H; and has satisfied all other requirements of state and federal law, including the Commercial Motor Vehicle Safety Act. The tests must be prescribed and conducted by the director. The applicant shall pay the fee listed in section 39-06.2-19 for each of the tests.

**SECTION 2. AMENDMENT.** Subsections 15 and 16 of section 39-06.2-10 of the North Dakota Century Code are amended and reenacted as follows:

15. ~~An individual is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of any combination of two serious traffic violations within a three-year period while operating a noncommercial motor vehicle, and either conviction results in the revocation, cancellation, or suspension of an operator's license, including a commercial driver's license. For a second conviction of any combination of two serious traffic violations, in a separate incident within a three-year period while operating a noncommercial vehicle, a learner's permit or commercial driver's license holder must be disqualified from operating a commercial motor vehicle, if the conviction results in the revocation, cancellation, or suspension of the learner's permit or commercial driver's license holder's license or noncommercial driving privileges, for a period of sixty days.~~
16. ~~An individual is disqualified from driving a commercial motor vehicle for a period of not less than one hundred twenty days if convicted of any combination of three or more serious traffic violations within a three-year period while operating a noncommercial motor vehicle, and any of the convictions results in the revocation, cancellation, or suspension of an operator's license, including a commercial driver's license. For a third or subsequent conviction of any combination of serious traffic violations, in a~~

<sup>130</sup> Section 39-06.2-07 was also amended by section 2 of House Bill No. 1098, chapter 320.

separate incident within a three-year period while operating a noncommercial motor vehicle, a person required to have a learner's permit or commercial driver's license and a learner's permit or commercial driver's license holder must be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 322

### HOUSE BILL NO. 1534

(Representatives K. Koppelman, Hanson, Paur)  
(Senators Dwyer, Rust)

AN ACT to amend and reenact subsections 1 and 2 of section 39-08-01, section 39-20-01, and subsection 1 of section 39-20-14 of the North Dakota Century Code, relating to driving under the influence of intoxicating liquor or any other drugs or substances, implied consent, and screening tests; and to declare an emergency.

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

<sup>131</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
  - a. That person has an alcohol concentration of at least eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
  - b. That person is under the influence of intoxicating liquor.
  - c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
  - d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.
  - e. That individual refuses to submit to any of the following:
    - (1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or
    - (2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01.

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<sup>131</sup> Section 39-08-01 was also amended by section 5 of House Bill No. 1050, chapter 186.

- f. Subdivision e does not apply to an individual unless the individual has been advised of the consequences of refusing a chemical test consistent with the Constitution of the United States and the Constitution of North Dakota.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless it is an affirmative defense that a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person. If the individual violated subdivisions a, b, c, or d of this subsection and subdivision e of this subsection and the violations arose from the same incident, for purposes of suspension or revocation of an operator's license, the violations are deemed a single violation and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control.

**SECTION 2. AMENDMENT.** Subsection 2 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

2. a. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests, required under section 39-06.2-10.2; or 39-20-01; or 39-20-14, is guilty of an offense under this section.
- ~~b. An individual is not subject to an offense under this section for refusal to submit to an onsite screening test under section 39-20-14 if the person submits to a chemical test under section 39-20-01 or 39-06.2-10.2 for the same incident. Upon the individual's refusal to submit to an onsite screening test, the police officer shall inform the individual that the individual may remedy the refusal if the individual takes a chemical test under section 39-20-01 or 39-06.2-10.2 for the same incident.~~

**SECTION 3. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**

1. Any individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, saliva, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual under arrest ~~and informing that~~

~~individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof for violation of section 39-08-01 or an equivalent offense.~~ For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used.

3. a. ~~The law enforcement officer shall inform the individual charged that North Dakota law requires the individual to take a chemical test to determine whether the individual is under the influence of alcohol or drugs and that refusal of the individual to submit to a test directed by the law enforcement officer may result in a revocation of the individual's driving privileges for a minimum of one hundred eighty days and up to three years. In addition, the law enforcement officer shall inform the individual refusal to take a breath or urine test is a crime punishable in the same manner as driving under the influence. If the officer requests the individual to submit to a blood test, the officer may not inform the individual of any criminal penalties until the officer has first secured a search warrant.~~
- b. ~~A test administered under this section~~If an individual refuses to submit to testing under this section, proof of the refusal is not admissible in any criminal or administrative proceeding to determine a violation of section ~~39-08-01 or under~~ this chapter if the law enforcement officer fails to inform the individual charged as required under subdivision a.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

**SECTION 4. AMENDMENT.** Subsection 1 of section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

1. Any individual who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer who has reason to believe that the individual committed a moving traffic violation or a violation under section 39-08-01 or an equivalent offense, or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the individual's body contains alcohol.

**SECTION 5. EMERGENCY.** Sections 1 and 2 of this Act are declared to be an emergency measure.

Approved April 8, 2019

Filed April 9, 2019



## CHAPTER 323

### HOUSE BILL NO. 1334

(Representatives D. Johnson, P. Anderson, Heinert, Pyle, Schreiber-Beck)  
(Senators Bakke, Dwyer, Luick, Myrdal, Wanzek)

AN ACT to create and enact section 39-08-01.6 of the North Dakota Century Code, relating to sealing a criminal record of a driving under the influence offense.

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

**SECTION 1.** Section 39-08-01.6 of the North Dakota Century Code is created and enacted as follows:

#### **39-08-01.6. Criminal record - Seal - Exception.**

1. The court shall seal an individual's criminal record under sections 12.1-32-07.1 and 12.1-32-07.2 if the individual:
  - a. Has pled guilty or nolo contendere to, or has been found guilty of a violation under section 39-08-01; and
  - b. Has not pled guilty or nolo contendere to, or has not been found guilty of a subsequent violation of section 39-08-01, or any other criminal offense, within seven years of the first violation under section 39-08-01.
2. This section does not apply to an individual licensed as a commercial driver under section 39-06.2-10 or to a prosecutor's access to a prior offense for purposes of enhancement under subsection 3 of section 39-08-01.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 324

### HOUSE BILL NO. 1065

(Representatives Roers Jones, Schreiber-Beck, Dockter, Satrom)  
(Senator K. Roers)

AN ACT to amend and reenact subsection 1 of section 39-08-09 of the North Dakota Century Code, relating to the immediate notice of a vehicle accident.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 39-08-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The driver of a vehicle involved in an accident resulting in injury to or death of any ~~person~~individual, or property damage to an apparent extent of at least ~~one~~four thousand dollars, shall immediately give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the state highway patrol. ~~Any person~~A driver who violates this section must be assessed a fine of fifty dollars. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish to the investigating law enforcement officer, then within five days of the accident the driver shall supply that information to the driver's license division in the form the division requires.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 325

### HOUSE BILL NO. 1198

(Representatives D. Ruby, Becker, Heinert, Kasper, Louser)  
(Senators Burckhard, Oban)

AN ACT to amend and reenact section 39-10-03 of the North Dakota Century Code, relating to class A authorized emergency vehicles.

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

**SECTION 1. AMENDMENT.** Section 39-10-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-10-03. Class A authorized emergency vehicles.**

1. The driver of a class A authorized emergency vehicle may:
  - a. Park or stand, irrespective of the provisions of this chapter.
  - b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
  - c. Exceed the speed limit so long as the driver does not endanger life or property.
  - d. Disregard regulations governing direction of movement or turning in specified directions.
2. The exceptions herein granted to a class A authorized emergency vehicle apply only:
  - a. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions.
  - b. When the class A authorized emergency vehicle is being operated in response to a reported emergency involving a possible personal injury, death, or damage to property, and when giving adequate warning by use of aan oscillating, rotating, revolving, or flashing red or combination red and white lights that are visible under normal atmospheric conditions for at least five hundred feet [152.4 meters] and if appropriate, giving audible signal by siren or airhorn. A firetruck, ambulance, or law enforcement vehicle that is otherwise a class A authorized emergency vehicle may display aan oscillating, rotating, revolving, or flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision.
  - c. In any instance when the head of a law enforcement agency deems advisable within the area of that person's jurisdiction for the protection of person and property and when giving audible signal by siren or when giving adequate warning by use of aan oscillating, rotating, revolving, or flashing red or combination red and white lights which are visible under

normal atmospheric conditions for at least five hundred feet [152.4 meters]. A firetruck, ambulance, or law enforcement vehicle that is otherwise a class A authorized emergency vehicle may display an oscillating, rotating, revolving, or flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision.

3. ~~An~~ class A authorized emergency vehicle may ~~not display or permit to be displayed any a steady red or red and blue lamp except that is visible under normal atmospheric conditions for at least five hundred feet [152.4 meters] when operated on official business~~ involved in an incident, emergency, or any other related activity.
4. Any law enforcement officer as provided in paragraph 2 of subdivision a of subsection 2 of section 39-01-01 having stopped another vehicle along a highway, and while still involved in that incident, or any other related activity, may use amber lights, visible under normal atmospheric conditions for at least five hundred feet [152.4 meters], for the purpose of maintaining traffic flow.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 326

### SENATE BILL NO. 2133

(Senators O. Larsen, Bekkedahl)  
(Representatives Hoverson, McWilliams, Paulson)

AN ACT to amend and reenact sections 39-10-41 and 39-10-43 of the North Dakota Century Code, relating to railroad grade crossings; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 39-10-41 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-41. Obedience to signal indicating approach of train or other on-track equipment.**

1. ~~Whenever any person driving~~When a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of ~~such~~the vehicle shall stop within fifty feet [15.24 meters] but not less than fifteen feet [4.57 meters] from the nearest rail of such railroad, and may not proceed until the driver can do so safely. ~~The foregoing~~These requirements apply when:
  - a. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train or other on-track equipment;
  - b. A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train or other on-track equipment;
  - c. A railroad train or other on-track equipment approaching within approximately one thousand three hundred twenty feet [402.34 meters] of the highway crossing emits a signal audible from such distance and such railroad train or other on-track equipment, by reason of its speed or nearness to such crossing, is an immediate hazard; or
  - d. An approaching railroad train or other on-track equipment is plainly visible and is in hazardous proximity to such crossing.
2. ~~No~~A person may not drive ~~any~~a vehicle through, around, or under any crossing gate or barrier at a railroad crossing while ~~such~~the gate or barrier is closed or is being opened or closed. ~~No~~A person may not drive ~~any~~a vehicle past ~~any~~a human flagman at a railroad crossing until the flagman signals that the way is clear to proceed.

**SECTION 2. AMENDMENT.** Section 39-10-43 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-43. Certain vehicles must stop at all railroad grade crossings.**

1. The driver of a bus carrying passengers, or of ~~any~~ schoolbus, or of ~~any~~ vehicle carrying any chlorine, empty or loaded cargo tank vehicles used to transport dangerous articles or any liquid having a flashpoint below two hundred degrees Fahrenheit [93.33 degrees Celsius], cargo tank vehicles transporting a commodity having a temperature above its flashpoint at the time of loading, certain cargo tank vehicles transporting commodities under special permits issued by the hazardous materials regulations board, and every motor vehicle which must have the following placards: "explosives", "poison", "flammable oxidizers", "compressed gas", "corrosives", "flammable gas", "radioactive", or "dangerous", before crossing at grade any track ~~or~~ tracks of a railroad, shall stop ~~such~~the vehicle within fifty feet [15.24 meters] but not less than fifteen feet [4.57 meters] from the nearest rail of ~~such~~the railroad and while ~~so~~ stopped shall listen and look in both directions along ~~such~~the track for any approaching train or other on-track equipment, and for signals indicating the approach of a train or other on-track equipment and may not proceed until the driver can do so safely. After stopping as required ~~herein~~ and upon proceeding when ~~it is~~ safe to do so, the driver of ~~any said~~the vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing ~~such~~the crossing and the driver may not ~~manually~~ shift gears manually while crossing the track ~~or~~ tracks.
2. ~~No~~A stop need ~~be made~~is not required at any ~~such~~a crossing at which ~~if~~ traffic is controlled by a police officer. For the purposes of this section, a United States marshal ~~must be~~is considered a police officer.
3. ~~No~~A stop need ~~be made~~is not required at a crossing that the director has designated as an out-of-service crossing and which is clearly marked by signs bearing the words "Tracks out of service" or "Exempt" in conspicuous places on each side of the crossing.
4. The designation must be limited to use at ~~crossings~~a crossing where track has been abandoned or its use discontinued.
5. The director shall notify the road authority and any railway company of a crossing under the jurisdiction of that railway company which the director has designated as an out-of-service crossing under this section and the road authority shall erect signs bearing the words "Tracks out of service" or "Exempt" in conspicuous places on each side of the crossing.
6. All signs must conform to the manual on uniform traffic-control devices as provided under section 39-13-06.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 327

### HOUSE BILL NO. 1405

(Representatives Lefor, Steiner)  
(Senator Wardner)

AN ACT to create and enact a new section to chapter 39-10 and a new subdivision to subsection 2 of section 39-06.1-06 of the North Dakota Century Code, relating to prohibiting blocking parking spaces for electric vehicles; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 39-10 of the North Dakota Century Code is created and enacted as follows:

**Electric vehicle parking stalls or spaces - Unauthorized parking or obstructing.**

1. If a public or private entity designates a parking space for charging an electric vehicle, the reserved space must be indicated by a sign approved by the director. The sign must be consistent with the manual of uniform traffic control devices authorized under section 39-13-06, and indicate:
  - a. Use of the reserved space is for charging electric vehicles only; and
  - b. Unauthorized use of the spaces is a nonmoving violation for which a fee of fifty dollars must be imposed.
2. An individual may not park or leave standing a vehicle in a stall or space designated for charging and parking a vehicle, unless the individual's vehicle is connected for electric charging purposes.
3. An individual may not obstruct, block, or otherwise bar access to a space designated for charging a vehicle.

<sup>132</sup> **SECTION 2.** A new subdivision to subsection 2 of section 39-06.1-06 of the North Dakota Century Code is created and enacted as follows:

A violation of section 1 of this Act, a fee of fifty dollars.

Approved March 28, 2019

Filed March 29, 2019

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<sup>132</sup> Section 39-06.1-06 was also amended by section 1 of House Bill No. 1327, chapter 317.

## CHAPTER 328

### HOUSE BILL NO. 1296

(Representatives Mock, Heinert, K. Koppelman, Satrom)  
(Senators Dwyer, Kreun, D. Larson)

AN ACT to amend and reenact section 39-10-71 of the North Dakota Century Code, relating to fleeing or attempting to elude a peace officer; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-10-71. Fleeing or attempting to elude a peace officer - Penalty.**

1. ~~Any~~A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a ~~class~~:
  - a. ~~Class~~ A misdemeanor for a first offense and a class C felony for a subsequent offense within three years. ~~An individual who violates this section while fleeing after or in the commission of a felony is guilty of a class;~~
  - b. Class C felony: if the driver violates this section while willfully fleeing during or after the commission of a felony; or
  - c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
2. A signal complies with this section if the signal is perceptible to the driver and:
  - a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
  - b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.

Approved March 28, 2019

Filed March 29, 2019



## CHAPTER 329

### HOUSE BILL NO. 1199

(Representatives D. Ruby, Becker, Jones, Kasper, Keiser, Lefor, Louser)  
(Senators Burckhard, Kreun, Oban)

AN ACT to create and enact a new section to chapter 39-10 of the North Dakota Century Code, relating to platoons; to amend and reenact section 39-10-18 of the North Dakota Century Code, relating to following a motor vehicle too closely; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 39-10-18 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-10-18. Following too closely.**

1. The driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.
2. The driver of any truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this does not prevent a truck or motor vehicle drawing another vehicle from overtaking and passing any vehicle or combination of vehicles.
3. Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles must be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision does not apply to funeral processions.
4. This section does not apply to the operation of a non-lead vehicle in a platoon.
5. As used in this section and section 2 of this Act, "platoon" means a group of motor vehicles using vehicle-to-vehicle communications to travel in a unified manner at close following distances on a multilane, limited-access, divided highway.

**SECTION 2.** A new section to chapter 39-10 of the North Dakota Century Code is created and enacted as follows:

##### **Motor vehicle platoons.**

1. The department, in coordination with the state highway patrol superintendent, shall develop an operational plan that provides guidelines for operating a platoon. The plan must include operational information that must be provided

by a platoon technology provider or commercial motor vehicle operator. The department may restrict platooning operations in accordance with the guidelines or the operational information provided in the plan.

2. A platoon may not operate unless the platoon technology provider or the commercial motor vehicle operator files an operational plan with the department and the plan is approved for general platoon operations. If the department does not approve the plan, the department shall inform the platoon technology provider or commercial motor vehicle operator of the reason for the disapproval and provide guidance on how to resubmit the plan to obtain approval.
3. A person operating a motor vehicle in a platoon without an approved plan must be assessed a fee of one hundred dollars.
4. A person operating a motor vehicle in violation of the guidelines in an operational plan must be assessed a fee of one hundred dollars.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 330

### SENATE BILL NO. 2151

(Senator Oehlke)  
(Representatives D. Johnson, Vigesaa)

AN ACT to amend and reenact subsection 3 of section 39-12-02 of the North Dakota Century Code, relating to annual permits for vehicles of excessive size or weight; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

3. An appropriate charge must be made for a 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. Permit fees generated by a political subdivision must be deposited in the local authority's general fund for support of the local road system. Publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles are not subject to charges for permits. The minimum fee for selected charges is as follows:
  - a. The fee for the ten percent weight exemption, harvest and wintertime, is fifty dollars per month for fees paid on a monthly basis or two hundred fifty dollars per year for fees paid on a yearly basis. Unused fees paid on a monthly basis are refundable. Unused fees paid on a yearly basis are not refundable.
  - b. The fee for an interstate permit is ten dollars per trip or three hundred dollars per ~~calendar year~~twelve-month period for unlimited trips.
  - c. The fee for special mobile equipment is twenty-five dollars per trip.
  - d. The fee for engineering is twenty-five dollars per trip.
  - e. The fee for faxing a permit is five dollars.
  - f. The fee for a single trip permit is twenty dollars per trip.
  - g. The fee for a bridge length permit is thirty dollars per trip or one hundred fifty dollars per ~~calendar year~~twelve-month period.
  - h. The fee for a longer combination vehicle permit is one hundred dollars per month for fees paid on a monthly basis.
  - i. The fee for an overwidth vehicle or load that is fourteen feet six inches [4.42 meters] or less is twenty dollars per trip or one hundred fifty dollars per ~~calendar year~~twelve-month period unless the vehicle is a

noncommercial fishhouse trailer being moved by the owner, then the fee is twenty dollars per ~~calendar year~~twelve-month period.

- j. The fee for an overlength vehicle or load that is one hundred twenty feet [36.58 meters] or less is twenty dollars per trip or one hundred fifty dollars per ~~calendar year~~twelve-month period.
- k. The highway patrol may establish an online electronic permit system. If the highway patrol establishes an online electronic permit system, the highway patrol shall assess an additional fee of up to fifteen dollars for every permit issued under this section to be deposited into the motor carrier electronic permit transaction fund.

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

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 331

### HOUSE BILL NO. 1280

(Representatives Beadle, Buffalo)  
(Senator K. Roers)

AN ACT to amend and reenact subsection 6 of section 39-16.1-11 of the North Dakota Century Code, relating to inception and expiration of motor vehicle insurance.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 39-16.1-11 of the North Dakota Century Code is amended and reenacted as follows:

6. Every motor vehicle liability policy is subject to the following provisions, which need not be contained ~~therein~~ in the policy:
  - a. The liability of the insurance carrier with respect to the insurance required by this chapter becomes absolute ~~whenever~~ if injury or damage covered by ~~said~~ the motor vehicle liability policy occurs; ~~said~~ the policy may not be canceled or annulled as to ~~such~~ the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; ~~and a~~ and a statement made by the insured or on the insured's behalf and ~~no~~ a violation of ~~said~~ the policy ~~may do not~~ may do not defeat or void ~~said~~ the policy. This subdivision does not restrict the ability of an insurance carrier to void a motor vehicle liability policy for which an application was made after injury or damage occurred and does not obligate the insurance carrier to pay a claim on account of injury or damage that occurred before the application was made.
  - b. The satisfaction by the insured of a judgment for ~~such~~ the injury or damage is not a condition precedent to the right or duty of the insurance carrier to make payment on account of ~~such~~ the injury or damage.
  - c. The insurance carrier has the right to settle any claim covered by the policy, and if ~~such~~ the settlement is made in good faith, the amount ~~thereof~~ of that settlement is deductible from the limits of liability specified in subdivision b of subsection 2 for the accident out of which ~~such~~ the claim arose.
  - d. The policy, the written application ~~thereof~~ of the policy, if any, and any rider or endorsement ~~which~~ that does not conflict with the provisions of this chapter constitute the entire contract between the parties.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 332

### HOUSE BILL NO. 1143

(Representative Keiser)  
(Senator Klein)

AN ACT to create and enact a new section to chapter 39-21 of the North Dakota Century Code, relating to prohibiting the manufacturing, sale, and installation of a counterfeit supplemental restraint system component and nonfunctional airbag; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 39-21 of the North Dakota Century Code is created and enacted as follows:

#### **Definitions - Prohibition on counterfeit and nonfunctional airbag - Penalty.**

1. As used in this section:

- a. "Airbag" means an inflatable occupant restraint system device in a motor vehicle which is part of a supplemental restraint system.
- b. "Counterfeit supplemental restraint system component" means a replacement supplemental restraint system component that displays a mark identical, or substantially similar to, the genuine mark of a motor vehicle manufacturer or a supplier of parts to the manufacturer of a motor vehicle without authorization from that manufacturer or supplier.
- c. "Nonfunctional airbag" means a replacement airbag that:
  - (1) Was previously deployed or damaged;
  - (2) Has an electric fault that is detected by the motor vehicle's airbag diagnostic systems when the installation procedure is completed and the motor vehicle is returned to the customer who requested the work to be performed or when ownership is intended to be transferred;
  - (3) Includes a part or object, including a supplemental restraint system component, which is installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing a functional airbag has been installed; or
  - (4) The airbag is subject to the prohibitions of 49 U.S.C. 30120(j).
- d. "Supplemental restraint system" means a passive inflatable motor vehicle crash protection system designed for use in conjunction with active restraint systems as defined in title 49, Code of Federal Regulations, part 571, section 208, which includes one or more airbags and all components required to ensure an airbag works as designed by the motor vehicle manufacturer including:

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- (1) Operating as designed in the event of a crash; and
  - (2) Is designed in accordance with federal motor vehicle safety standards of the specific make, model, and year of the motor vehicle in which the airbag is or will be installed.
2. A person may not intentionally or knowingly:
    - a. Manufacture, import, install, reinstall, distribute, sell, or offer for sale any device intended to replace a supplemental restraint system component in any motor vehicle if the device is a counterfeit supplemental restraint system component, nonfunctional airbag, or a device that does not meet the federal motor vehicle safety standards as provided under title 49, Code of Federal Regulations, part 571, section 208.
    - b. Sell, install, or reinstall in a motor vehicle, any device that causes the motor vehicle's diagnostic systems to fail to warn when the motor vehicle is equipped with a counterfeit supplemental restraints system component or nonfunctional airbag, or when an airbag is not installed.
  3. Subsection 2 does not prohibit a motor vehicle dealer, repair facility, manufacturer, or other entity from taking action to collect and dispose of used or recalled supplemental restraint system components in accordance with federal law.
  4. A person that violates subsection 2 is guilty of a class A misdemeanor.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 333

### SENATE BILL NO. 2120

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to amend and reenact section 39-22-18 of the North Dakota Century Code, relating to retail motor vehicle sales.

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

**SECTION 1. AMENDMENT.** Section 39-22-18 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-22-18. Renewal of dealer license - Fees - Minimum sales requirement - Penalty.**

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~~may not renew the dealer license of any applicant who has made less than ~~four~~eight 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. Any dealer who fails to submit a renewal application before the expiration of the dealer's current license, in addition to all other fees due, shall pay a one hundred dollar fee at the time the dealer's license is renewed. For purposes of this section, "retail motor vehicle sales" means the sale of a motor vehicle that requires titling and registration in order to operate on the roads.

Approved April 11, 2019

Filed April 12, 2019



# MUNICIPAL GOVERNMENT

## CHAPTER 334

### SENATE BILL NO. 2304

(Senators Oban, Burckhard, Piepkorn)  
(Representatives Bosch, Lefor, D. Ruby)

AN ACT to amend and reenact section 12.1-01-05 and subsection 2 of section 40-05-06 of the North Dakota Century Code, relating to the effect of state law on city or county ordinances and limits on city fines and penalties.

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

**SECTION 1. AMENDMENT.** Section 12.1-01-05 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-01-05. Crimes defined by state law shall not be superseded by city or county ordinance or by home rule city's or county's charter or ordinance.**

~~No~~Except as provided in section 40-05-06, an offense defined in this title or elsewhere by law ~~shall~~may not be superseded by any city or county ordinance, or city or county home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offense definitions shall have full force and effect within the territorial limits and other jurisdiction of home rule cities or counties. This section ~~shall~~does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.

<sup>133</sup> **SECTION 2. AMENDMENT.** Subsection 2 of section 40-05-06 of the North Dakota Century Code is amended and reenacted as follows:

- For every violation of a city ordinance ~~regulating~~that regulates the operation or equipment of ~~a motor vehicles~~vehicle or ~~regulating~~which regulates traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which may ~~not exceed~~be up to one hundred percent, the ~~limits~~limit, for ~~an equivalent categories~~category of ~~violations~~violation, set forth in section 39-06.1-06.

Approved April 17, 2019

Filed April 18, 2019

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<sup>133</sup> Section 40-05-06 was also amended by section 1 of House Bill No. 1244, chapter 335.

## CHAPTER 335

### HOUSE BILL NO. 1244

(Representatives K. Koppelman, Magrum)  
(Senator Bakke)

AN ACT to amend and reenact section 40-05-06, subsection 3 of section 40-18-01, and section 40-18-14 of the North Dakota Century Code, relating to city fines and penalties and jurisdiction of municipal judges; and to provide a penalty.

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

<sup>134</sup> **SECTION 1. AMENDMENT.** Section 40-05-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-05-06. City fines and penalties limited.**

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city may not exceed one thousand five hundred dollars, and the imprisonment may not exceed thirty days for one offense.
2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which may not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.
3. For every violation of a city ordinance enforcing the requirements of ~~40-CFR 403~~title 40, Code of Federal Regulations, section 403 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand five hundred dollars, imprisonment for thirty days, or both such fine and imprisonment.
4. This section does not prohibit the use of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this section limit the use of deferred or suspended sentences under subsections 3 and 4 of section 12.1-32-02.

**SECTION 2. AMENDMENT.** Subsection 3 of section 40-18-01 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provision of law, the municipal court has no jurisdiction to hear, try, and determine an offense which would be a violation of section 39-08-01 or equivalent ordinance, if the ~~person~~individual charged with the offense has twice previously been convicted of a violation of section 39-08-01 or equivalent ordinance within the ~~five~~seven years preceding the commission of the offense charged or if the ~~person~~individual charged with the

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<sup>134</sup> Section 40-05-06 was also amended by section 2 of Senate Bill No. 2304, chapter 334.

offense has three times previously been convicted of a violation of section 39-08-01 or equivalent ordinance within the ~~seven~~fifteen years preceding the commission of the offense charged. If such an offense is charged in the municipal court and the municipal judge has notice of a violation of section 39-08-01 or equivalent ordinance twice within the ~~five~~seven years, or three times within the ~~seven~~fifteen years, preceding the commission of the offense charged, the municipal judge shall dismiss the charge, without prejudice, and direct that the charge be filed against the ~~person~~individual in the district court.

**SECTION 3. AMENDMENT.** Section 40-18-14 of the North Dakota Century Code is amended and reenacted as follows:

**40-18-14. Municipal judge may enforce orders and judgments and punish for contempt.**

A municipal judge ~~has the power to~~may enforce due obedience to the court's orders and judgments. The judge may fine or imprison for contempt committed in the judge's presence while holding court, as well as for contempt of process issued, and of orders made by the judge. When an act or omission constituting a contempt in a municipal court is not committed in the presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest thereupon may issue on which the person accused may be arrested and brought before the municipal judge immediately. The person must be given a reasonable opportunity to employ counsel and defend against the alleged contempt. After hearing the allegations and proofs, the municipal judge may discharge the person or adjudge the person guilty and may punish by fine or imprisonment or both. The fine in any case may not be more than one thousand five hundred dollars and the imprisonment may not be more than thirty days.

Approved March 6, 2019

Filed March 6, 2019

## CHAPTER 336

### SENATE BILL NO. 2178

(Senators Erbele, Luick, Myrdal)  
(Representatives K. Koppelman, Paur, Satrom)

AN ACT to amend and reenact section 40-18-06.2 of the North Dakota Century Code, relating to the term of a municipal judge; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 40-18-06.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-18-06.2. Transfer of municipal ordinance cases to district court - Abolition of office of municipal judge.**

With the agreement of the governing body of the county, the presiding judge of the judicial district in which the city is located, and the state court administrator, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the district court serving the county in which the city is located. These cases are deemed district court cases for purposes of appeal. The governing body of a city with a population of less than five thousand, upon transferring all municipal court cases to the district court, may abolish by resolution the office of municipal judge. The term of office of the municipal judge elected to serve that city terminates upon the ~~date the governing body of the city abolishes the office of municipal judge~~ last day of the month in which all municipal cases have been transferred to district court or the expiration of the judge's term, whichever occurs first.

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

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 337

### HOUSE BILL NO. 1147

(Representatives Lefor, Devlin, Heinert, K. Koppelman, Roers Jones, M. Ruby)  
(Senator Wardner)

AN ACT to create and enact a new section to chapter 40-18 of the North Dakota Century Code, relating to the location of a proceeding before a municipal judge and the use of reliable electronic means.

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

**SECTION 1.** A new section to chapter 40-18 of the North Dakota Century Code is created and enacted as follows:

##### **Change of venue - Reliable electronic means.**

1. A municipal judge may change the venue of a proceeding under this chapter upon consideration of the following factors:
  - a. Convenience to the parties and witnesses;
  - b. Judicial efficiency;
  - c. Available facilities; and
  - d. Administration of justice.
2. A municipal judge may not change the venue of a proceeding if any party to the proceeding objects to the change.
3. A municipal judge may use contemporaneous audio or audiovisual transmission by reliable electronic means in accordance with rule 52 of the North Dakota Supreme Court Administrative Rules. A municipal judge who presides over a proceeding through contemporaneous audio or audiovisual transmission by reliable electronic means is equivalent to a municipal judge who is physically present at the proceeding.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 338

### SENATE BILL NO. 2040

(Legislative Management)  
(Taxation Committee)

AN ACT to amend and reenact section 40-22-18 of the North Dakota Century Code, relating to treatment of property owned by a political subdivision when calculating protests against the formation of a special improvement district.

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

**SECTION 1. AMENDMENT.** Section 40-22-18 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-22-18. Protest bar to proceeding - Invalid or insufficient protests - Payment of costs - Tax levy.**

If the governing body finds the protests to contain the names of the owners of a majority of the area of the property included within the improvement district, the protests shall be a bar against proceeding with any special assessment for the improvement project. However, the protests do not bar proceeding with the improvement project described in the plans and specifications if the governing body funds the project with funds other than special assessments. If the governing body finds the protests to contain the names of the owners of a majority of any separate property area included within the district, ~~such~~the protests shall be a bar against proceeding with special assessments to be assessed in whole or in part upon property within ~~such~~the area, but shall not bar against proceeding with the improvement project or assessing the cost thereof against other areas within the district, unless ~~such~~the protests represent a majority of the area of the entire district. If the protests represent a majority of the area of the entire district, ~~such~~the protests bar any special assessment for the improvement project. Property owned by a political subdivision is not included when determining whether the protests contain the names of the owners of a majority of the area included within the improvement district or a separate property area unless the political subdivision filed a protest.

The termination of proceedings, by reason of protest or otherwise, shall not relieve the municipality of responsibility for payment of costs theretofore incurred and for payment of ~~such~~the costs a municipality may, if funds on hand and available for the purpose are insufficient, issue its certificates of indebtedness or warrants, or levy a tax which shall be considered a tax for a portion of the cost of a special improvement project by general taxation within the meaning of section 57-15-10. If the protests are found to be insufficient or invalid, the governing body may cause the improvement to be made and may contract or otherwise provide in accordance with this title for the construction thereof and the acquisition of property required in connection therewith and may levy and collect assessments therefor.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 339

### HOUSE BILL NO. 1471

(Representative D. Ruby)

AN ACT to create and enact a new section to chapter 40-47 of the North Dakota Century Code, relating to extraterritorial zoning fees.

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

**SECTION 1.** A new section to chapter 40-47 of the North Dakota Century Code is created and enacted as follows:

#### **Extraterritorial zoning - Limitation.**

Notwithstanding any other provision of law, a city that exercises extraterritorial jurisdiction under this chapter may not impose building permit fees on any section of unincorporated territory which are higher than the building permit fees within the city exercising the jurisdiction.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 340

### HOUSE BILL NO. 1360

(Representatives Bosch, Lefor, Nathe, Sanford)  
(Senators Bakke, Bekkedahl, D. Larson, Oban)

AN ACT to amend and reenact sections 40-49-14 of the North Dakota Century Code, relating to bid requirements for park districts; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 40-49-14 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-49-14. When ye and nay vote taken - ~~Letting~~Awarding contracts - Debt limit - Bills, claims, and demands against board.**

1. Ye and nay votes must be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money must be recorded in the record of the board's proceedings and is sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. Except as provided in chapter 48-01.2, in an emergency situation, or for cooperative purchases with the office of management and budget as provided in chapter 54-44.4, all contracts exceeding ~~twenty-five~~fifty thousand dollars must be ~~let~~awarded to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for two successive weeks. The board may reject any or all bids. All contracts must be in writing and must be signed by the president of the board or a designated representative and unless so executed, they shall be void. The debt of a park district may not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district may be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

#### CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here



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If signed for a firm or company,  
show authority on this line.

2. As used in this section, "emergency situation" means a sudden or unexpected occurrence that requires immediate action to protect public health, safety, or property.

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

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 341

### SENATE BILL NO. 2193

(Senators Wardner, Bekkedahl, Meyer)  
(Representatives Lefor, Schreiber-Beck, Zubke)

AN ACT to amend and reenact sections 40-57.3-01, 40-57.3-01.1, and 40-57.3-02, subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section 57-39.2-02.1, and subsection 22 of section 57-39.2-04 of the North Dakota Century Code, relating to city lodging and restaurant tax and visitors' committee membership and references to tourist court accommodations.

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

**SECTION 1. AMENDMENT.** Section 40-57.3-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-57.3-01. City lodging tax - Imposition - Amount - Disposition.**

The governing body of any city ~~may~~, by ordinance, may impose a city tax, not to exceed two percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or ~~tourist court~~other accommodations within the city for periods of ~~less~~fewer than thirty consecutive calendar days or one month. The tax imposed by this section ~~shall~~must be in addition to the state sales tax on rental accommodations provided in chapter 57-39.2 and any city ~~which~~that imposes the tax upon gross receipts described in this section shall deposit all proceeds in the city visitors' promotion fund. Moneys deposited in the city visitors' promotion fund ~~shall~~must be spent only as provided in this chapter. This chapter applies to all cities and does not limit the authority of a home rule city to levy any taxes authorized by other provisions of law.

**SECTION 2. AMENDMENT.** Section 40-57.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-57.3-01.1. City lodging and restaurant tax - Imposition - Amount - Disposition - Referral.**

In addition to the tax under section 40-57.3-01, the governing body of any city ~~may~~, by ordinance, may impose a city tax, at a rate not to exceed one percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or ~~tourist court~~other accommodations within the city for periods of ~~less~~fewer than thirty consecutive calendar days or one month and upon the gross receipts of a restaurant from any sales of prepared food or beverages, not including alcoholic beverages for consumption off the premises where purchased, which are subject to state sales taxes. For purposes of this section, "restaurant" means any place where food is prepared and intended for individual portion service for consumption on or off the premises and "prepared" includes heating prepackaged food. Accommodations, food, and beverages ~~may~~ all, each, or in any combination be ~~subjected~~subject to the tax under this section, if all items in any category which are taxable under state law are taxable, except as otherwise provided in this section. The tax imposed under this section is in addition to state sales taxes on rental accommodations and restaurant sales and any city ~~which~~that imposes the tax under this section shall deposit all

proceeds in the city visitors' promotion capital construction fund. Moneys deposited in the city visitors' promotion capital construction fund ~~shall~~must be spent only as provided in this chapter. An ordinance adopted under this section may not become effective sooner than sixty days after it is adopted by the governing body of the city. The provisions of chapter 40-12 with regard to referral of ordinances apply to an ordinance adopted under this section except that a petition to refer an ordinance adopted under this section must be presented to the governing body of the municipality before four p.m. on the sixty-fourth day after the ordinance described in the petition was adopted by the governing body of the municipality. Revenues from a tax imposed under this section may not be pledged under section 40-57.3-03 to payment of bonds or evidences of indebtedness until after the time has passed for filing a referral petition against an ordinance under this section or, if a referral petition is filed, until after the referral petition has been submitted to the vote of the electors of the municipality.

**SECTION 3. AMENDMENT.** Section 40-57.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**40-57.3-02. City visitors' promotion fund - City visitors' promotion capital construction fund - Visitors' committee - Establishment - Purpose.**

The governing body of any city ~~which that~~ imposes a city tax pursuant to section 40-57.3-01, 40-57.3-01.1, or 40-57.3-01.2 shall, as appropriate, ~~shall~~ establish a city visitors' promotion fund; ~~and~~ a city visitors' promotion capital construction fund; ~~and a visitors' committee. The visitors' committee. The local destination marketing organization or visitors' committee~~ shall serve as an advisory committee to the city governing body in administering the proceeds from the taxes available to the city under this chapter. The moneys in the visitors' promotion fund must be used generally to promote, encourage, and attract visitors to come to the city and use the travel and tourism facilities within the city. The moneys in the visitors' promotion capital construction fund must be used generally for tourism or the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion. ~~The advisory committee shall consist of five members appointed by the governing body of the city consists of the local destination marketing organization or the visitors' committee. These appointees shall serve without compensation, except for reimbursement for necessary expenses. Committee members shall serve for a term of four years, except that two of those initially appointed must be appointed for an initial term of two years. Vacancies must be filled in the same manner as the initial appointment. The committee shall elect a chairperson and vice chairperson from among its members to serve for a term of two years.~~

<sup>135</sup> **SECTION 4. AMENDMENT.** Subsections 21, 22, and 23 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service, excluding internet access service, to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering,

<sup>135</sup> Section 57-39.2-01 was also amended by section 1 of Senate Bill No. 2165, chapter 495, section 2 of Senate Bill No. 2192, chapter 95, and section 1 of Senate Bill No. 2338, chapter 496.

selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or ~~tourist court~~ other accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property, including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or ~~tourist court~~ other accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, excluding internet access service, or tickets or admissions to places of amusement, entertainment, and athletic events, or magazines or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.

23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, excluding internet access service, the furnishing of hotel, motel, or ~~tourist court~~ other accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

<sup>136</sup> **SECTION 5. AMENDMENT.** Subdivision e of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- e. The leasing or renting of a hotel or motel room or ~~tourist court~~ other accommodations.

<sup>137</sup> **SECTION 6. AMENDMENT.** Subsection 22 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

22. Gross receipts from the leasing or renting of manufactured homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or ~~tourist court~~ other accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.

Approved March 26, 2019

Filed March 27, 2019

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<sup>136</sup> Section 57-39.2-02.1 was also amended by section 3 of Senate Bill No. 2192, chapter 95.

<sup>137</sup> Section 57-39.2-04 was also amended by section 3 of House Bill No. 1131, chapter 296, section 7 of Senate Bill No. 2089, chapter 477, and section 4 of Senate Bill No. 2192, chapter 95.

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 342

### HOUSE BILL NO. 1279

(Representatives Beadle, Buffalo)  
(Senator J. Roers)

AN ACT to amend and reenact sections 43-06-03 and 43-06-04 of the North Dakota Century Code, relating to membership of the board of chiropractic examiners; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 43-06-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-06-03. State board of chiropractic examiners - Members - Appointment - Qualifications.**

1. The state board of chiropractic examiners shall consist of five consists of seven members appointed by the governor. The members are:
  - a. Five doctors of chiropractic;
  - b. One certified chiropractic clinical assistant; and
  - c. One consumer member.
2. Each person~~doctor~~ of chiropractic appointed must:
  1. a. Have a license to practice chiropractic in North Dakota.
  2. b. Have been a resident of this state and have practiced chiropractic in this state for at least five consecutive years immediately before appointment to the board.
  3. c. Remain a resident of this state and continue in active practice in this state during the term of office.
  - d. Be a licensee in good standing and must not be the subject of a pending investigation by the board for violations under this chapter.
3. Each certified chiropractic clinical assistant appointed must:
  - a. Be certified as a chiropractic clinical assistant and meet the requirements of section 43-06-16.1.

- b. Be actively engaged in the practice of a certified chiropractic clinical assistant in the state for at least one year immediately preceding appointment to the board.
- 4. Each consumer member appointed:
  - a. Must be a resident of the state for at least five years immediately preceding appointment to the board.
  - b. May not have personal or familial financial relationships to the chiropractic profession.
  - c. May not be, and may not be a spouse of, a doctor of chiropractic, certified chiropractic clinical assistant, or licensed health care professional.
- 5. An individual appointed to the board as a certified chiropractic clinical assistant may not participate in any activities related to the clinical examination of chiropractic licensure applicants.
- 6. An individual appointed to the board as a consumer may not participate in any activities related to the clinical examination of chiropractic or certified chiropractic clinical assistant licensure applicants.

**SECTION 2. AMENDMENT.** Section 43-06-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-04. Board of chiropractic examiners - Members - Term of office.**

- 1. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold office for a term of five years and until the member's successor is appointed and qualified. The terms of office of the members of the board must be so arranged that ~~one term and only one term~~ expires on the thirty-first day of August of ~~each~~ any year ~~except~~.
- a. Every fifth year, the governor shall appoint a doctor of chiropractic and a certified chiropractic clinical assistant to the board.
- b. Two years after the appointments in subdivision a, the governor shall appoint a doctor of chiropractic and a consumer member to the board.
- 2. A member may not serve for more than two consecutive five-year terms.
- 3. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy. Vacancies on the board must be filled by appointment by the governor. ~~When a vacancy occurs on the board by expiration of the term, death, or resignation of a member, or removal for other cause, the North Dakota chiropractic association shall nominate, by procedure adopted in the bylaws of said association, to the governor three qualified persons for each vacancy. The governor shall appoint a member to fill the vacancy on the board from the three nominees.~~

**SECTION 3. APPLICATION.** This Act applies to appointments made to the board of chiropractic examiners after July 31, 2019.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 343

### SENATE BILL NO. 2235

(Senator Dever)

AN ACT to amend and reenact sections 43-07-01, 43-07-03, 43-07-07, 43-07-09, 43-07-09.1, 43-07-10, 43-07-11.1, 43-07-12, 43-07-13, and 43-07-19 of the North Dakota Century Code, relating to the regulation of contractors.

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

**SECTION 1. AMENDMENT.** Section 43-07-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-07-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Contractor" means any person engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas, or water pipelines, and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and ~~shall include~~includes subcontractor, public contractor, and nonresident contractor.
2. "Contractor year" means March second through March first.
3. "Nonresident contractor" means any contractor who ~~has~~does not have an established and maintained place of business within this state, or who has not made reports to North Dakota workforce safety and insurance within the previous year of employees within this state, and who has not made contributions to the North Dakota workforce safety and insurance fund accordingly, or who, during a like period has not made an income tax return in this state.
3. "~~Person~~" ~~includes any individual, firm, copartnership, association, corporation, limited liability company, or other group or combination thereof acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed clearly by the context thereof.~~
4. "Public contract" means a contract with the state of North Dakota or any board, commission, or department thereof, or with any board of county commissioners, or with any city council or board of city commissioners, board of township supervisors, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to let or award contracts for the construction or reconstruction of public work when the contract cost, value, or price exceeds the sum of four thousand dollars and includes subcontracts undertaken to perform work covered by the original contract or any part thereof when the contract cost, value, or price of the work included in the subcontract exceeds the sum of four thousand dollars.



5. "Registrar" means the secretary of state of the state of North Dakota.

**SECTION 2. AMENDMENT.** Section 43-07-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-03. Registrar designated authority.**

The secretary of state as registrar has authority to may employ such assistance and procure such records, supplies, and equipment as may be necessary to carry out the provisions of this chapter.

**SECTION 3. AMENDMENT.** Section 43-07-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-07. Classes of licenses - License fees - License renewal fees.**

1. Four classes of licenses may be issued under this chapter, which must be designated as class A, B, C, and D licenses. A holder of a license may engage in the contracting business within this state subject to the following limitations:
  - a. The holder of a class A license is subject to no limitation as to the value of any single contract project.
  - b. The holder of a class B license is not entitled to engage in the construction of any single contract project of a value in excess of five hundred thousand dollars.
  - c. The holder of a class C license is not entitled to engage in the construction of any single contract project of a value in excess of three hundred thousand dollars.
  - d. The holder of a class D license is not entitled to engage in the construction of any single contract project of a value in excess of one hundred thousand dollars.
2. ~~When~~ If applying for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:
  - a. For a class A license, the sum of four hundred fifty dollars.
  - b. For a class B license, the sum of three hundred dollars.
  - c. For a class C license, the sum of two hundred twenty-five dollars.
  - d. For a class D license, the sum of one hundred dollars.
3. For a ~~certificate of renewal for~~ a license, the licensee shall pay to the registrar the following fees:
  - a. For a class A license, the sum of ninety dollars.
  - b. For a class B license, the sum of sixty dollars.
  - c. For a class C license, the sum of forty-five dollars.
  - d. For a class D license, the sum of thirty dollars.

4. Twenty-five percent of all moneys collected by the registrar under this chapter must be deposited in the secretary of state's general services operating fund to pay the cost to administer this chapter and the balance of the moneys collected must be deposited with the state treasurer, who shall credit ~~them~~that amount to the general fund of the state.

**SECTION 4. AMENDMENT.** Section 43-07-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-09. Duty of registrar - Expiration of license.**

Within fifteen days from the date of application, the registrar may investigate and determine each applicant's eligibility to act in the capacity of a contractor as provided in section 43-07-04.1, and no license may be issued to such applicant until the registrar receives all documentation necessary to obtain a license and the appropriate fee. The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current  ~~fiscal contractor~~ year ending March first, except that an initial license issued to a licensee in January or February is valid until March first of the subsequent year.

**SECTION 5. AMENDMENT.** Section 43-07-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-09.1. Name changes.**

Not later than ten days after the date of a change in a contractor's name, the licensee ~~must~~shall notify the registrar of the name change on a form provided by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not change ~~its~~the name of the licensee if the change is associated with a change in the legal status other than a change in marital status. A corporation, limited liability company, limited liability partnership, or limited partnership registered with the ~~secretary of state~~registrar is not subject to this section.

**SECTION 6. AMENDMENT.** Section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-10. Renewal of license - Grounds for nonrenewal - Time requirements - Invalidity of license for failure to renew.**

1. Any license issued under this chapter may be renewed for each successive  ~~fiscal contractor~~ year by obtaining from the registrar a certificate ~~of renewal for the current contractor year~~. To obtain a certificate ~~of renewal for the current contractor year~~, the licensee shall file with the registrar an application that includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of twenty-five thousand dollars and the nature of the work of each project, contract, or subcontract. The registrar ~~shall~~, within a reasonable time, shall forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of liability insurance naming the ~~secretary of state~~registrar as the certificate holder unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes, including North Dakota income tax, workforce safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.

2. The registrar may refuse to renew a license if the registrar determines the application contains false, misleading, or incomplete information or if the contractor's license is not in good standing for any of the reasons listed in subsection 3 of section 43-07-04. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
3. The application for a certificate of renewal for the current contractor year must be made to the registrar on or before the first day of March second of each year, except as provided otherwise under this chapter. At the time of filing the application for a certificate of renewal for the current contractor year, the applicant shall pay to the registrar the renewal 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 for the current contractor year 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 section 43-07-02. Within sixty days after March first, the registrar shall notify 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 fifty dollars, filing an application for a certificate of renewal for the current contractor year, and paying the renewal fee. A contractor who applies for a certificate of renewal for the current contractor year 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~~ expired. Any application for a certificate of renewal for the current contractor year must be fully completed within sixty days of the date the application is received by the registrar or the registrar shall return the application to the contractor who then is subject to section 43-07-09. The registrar may destroy all renewals provided for in this section after ~~they~~ the renewals have been on file for six years.

**SECTION 7. AMENDMENT.** Section 43-07-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-11.1. Contracts with state.**

1. ~~No~~ A contractor, resident or nonresident, is not eligible to enter into a public contract with any department of the state of North Dakota, ~~nor~~ or any political or governmental subdivision of the state until satisfactory showing is made that ~~said~~ the contractor has paid all delinquent income, sales or use taxes, if any, owed to the state pursuant to the provisions of the income, sales or use tax laws, and which have been assessed either by the filing of an income or sales and use tax return by the contractor, or by an assessment of additional income, sales or use taxes against the contractor by the commissioner ~~that~~ which has become finally and irrevocably fixed, before the date that the contract was executed by the parties thereto. ~~"Contractor" and "public contract" have the same definition for purposes of this section as in chapter 43-07 relating to issuance of licenses to contractors to the contract.~~

2. A certificate from and by the tax commissioner ~~shall satisfy~~satisfies the requirement of subsection 1. Upon failure to file such a certificate, ~~such the~~ department or political or governmental subdivision shall refuse to execute ~~said the~~ public contract.
3. The provisions of this section apply ~~only~~ to contracts executed after July 1, 1965.

**SECTION 8. AMENDMENT.** Section 43-07-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-12. Bids to show license issued.**

All bids and proposals for the construction of any public contract project subject to the ~~provisions of this chapter~~ must contain a copy of the license or certificate of ~~renewal thereof for the current contractor year of the license~~ issued by the ~~secretary of state~~registrar, enclosed in the required bid bond envelope. ~~No~~A contract may ~~not~~ be awarded to any contractor unless the contractor is the holder of a license in the class within which the value of the project falls as ~~hereinbefore~~ provided under this section. A contractor must be the holder of a license at least ten days ~~prior to~~before the date set for receiving bids, to be a qualified bidder. A bid submitted without this information properly enclosed in the bid bond envelope may not be read ~~nor~~or considered and must be returned to the bidder. This section does not apply to bids submitted:

1. To the department of transportation;
2. For use of municipal, rural, and industrial water supply funds authorized by Public Law No. 99-294 [100 Stat. 418];
3. To the public service commission; or
4. For use of federal aid highway funds authorized by Public Law No. 85-767 [72 Stat. 885; 23 U.S.C. 101 et seq.].

**SECTION 9. AMENDMENT.** Section 43-07-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-13. Records and certified copies thereof of records.**

The registrar shall maintain in the registrar's office, open to public inspection during office hours, a complete indexed record of all applications, licenses, ~~certificates of renewal for the current contractor year~~, revocations, expirations, and other information maintained on contractors. The registrar may dispose of an inactive contractor file after two years if no attempts have been made to apply for a new license or renew the license. Disposal of the license will proceed according to the provisions of chapter 54-46. Before disposal and upon request, the registrar shall furnish a certified copy of any information maintained upon receipt of the fees prescribed in section 54-09-04. Any certificate or certified copy issued by the ~~secretary of state~~registrar under this section has the same force and effect as provided in section 54-09-02.1.

**SECTION 10. AMENDMENT.** Section 43-07-19 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-19. Nonresident contractors - Agent for service of process.**

Every applicant for a contractor's license who is not a resident of the state of North Dakota, by signing and filing the application, appoints the ~~secretary of state~~ registrar as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. ~~Such~~ The appointment in writing is evidence of the contractor's consent that any ~~such~~ process against the contractor which is so served upon the ~~secretary of state~~ shall be registrar is of the same legal force and effect as if served upon the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32.1, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.2 and having a current registered agent and registered address on file in the ~~secretary of state's~~ registrar's office do not need ~~not~~ to appoint the ~~secretary of state~~ registrar as agent for service of process under this section. Within ten days after service of the summons upon the ~~secretary of state~~ registrar, notice of ~~such~~ the service with the summons and complaint in the action shall ~~must~~ be sent to the defendant contractor at the defendant contractor's last-known address by registered or certified mail with return receipt requested and proof of ~~such~~ the mailing shall ~~must~~ be attached to the summons. The ~~secretary of state~~ registrar shall keep a record of all process served upon the ~~secretary of state~~ registrar under this section, showing the day and hour of service. ~~Whenever~~ if service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order ~~such~~ the continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 344

### HOUSE BILL NO. 1157

(Representative B. Koppelman)

AN ACT to amend and reenact sections 43-09-01, 43-09-05, 43-09-09, 43-09-09.2, 43-09-10, 43-09-11, 43-09-12, 43-09-13.2, 43-09-15, 43-09-15.1, 43-09-16, 43-09-18, 43-09-20, 43-09-21, 43-09-22, and 43-09-23 of the North Dakota Century Code, relating to regulation by the state electrical board; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 43-09-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-09-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Apprentice electrician" means ~~a person~~ an individual who is learning the trade under the personal supervision of a state-licensed electrician.
2. "Board" means the state electrical board.
3. "Class B electrician" means ~~a person having~~ an individual who has the necessary qualifications, training, and technical knowledge to wire, install, and repair electrical apparatus and equipment in accordance with the standard rules and regulations governing such work, ~~and shall have~~ who has eighteen months' experience in farmstead or residential wiring, and ~~shall have~~ passed an examination before the state electrical board based upon the national electrical code as it applies to farmstead or residential wiring.
4. "Journeyman electrician" means ~~a person having~~ an individual who has the necessary qualifications, training, and technical knowledge to wire, install, and repair electrical apparatus and equipment and power limited systems in accordance with the standard rules and regulations governing such work.
5. "Licensee" means an individual who holds a valid license issued by the board.
6. "Master electrician" means ~~a person having~~ an individual who has the necessary qualifications, training, experience, and technical knowledge to plan, lay out, and supervise the installation and repair of electrical wiring apparatus, and equipment for electric light, heat, ~~and power,~~ and power limited systems, in accordance with the standard rules and regulations governing such work.
7. "Nonelectrical system" means a system as defined by the articles contained in chapter 8 and other articles which contains class II or class III circuits and systems as defined by the national electrical code, as adopted by the board. Although the board may expand this definition, the board may not narrow this definition. The term does not include a circuit or system that is installed:

- a. Within an area of special occupancies, as defined under articles 500 through 517 of the national electrical code.
  - b. For heat, light, or power.
  - c. For the control of heat, light, or power, unless the circuit or system employs digital communication.
8. "Power limited electrician" means an individual who has the necessary qualifications, training, experience, and technical knowledge to plan, layout, and supervise the installation and repair of a power limited system.
  9. "Power limited system" means a system as defined by the articles contained in chapter 8 and other articles which contains class II or class III circuits and systems as defined by the national electrical code, as adopted by the board. Although the board may expand this definition, the term does not include a nonelectrical system.

**SECTION 2. AMENDMENT.** Section 43-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-05. Powers and duties of state electrical board - Biennial report.**

The board shall adopt a seal and may adopt reasonable rules to carry out this chapter. The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The board shall appoint qualified inspectors. Upon receipt of notice of completion of any electrical wiring or power limited system installation involving a value of five hundred dollars or more, the inspectors shall inspect the electrical or power limited system installation and approve or condemn that installation. The inspector shall make a report of the inspection on forms prescribed by the board.

**SECTION 3. AMENDMENT.** Section 43-09-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-09. License required - Examination - Board to issue license.**

Every

1. ~~A person, partnership, company, corporation, limited liability company, or association that undertakes or offers~~ may not undertake or plan to undertake with another person to plan, lay out, supervise, install, make additions, make alterations, or make repairs, in the installation of wiring, apparatus, or equipment for electric light, heat, or power or for a power limited system, shall apply to unless licensed by the board for a license.
2. The board shall examine ~~the~~ an applicant for licensure and if, upon a technical and practical examination, the applicant is found to possess the required knowledge and skill and to be versed in the laws of electricity, the applicant shall be issued a license in the class for which the applicant was examined. The license ~~shall~~ must be signed by the president and the secretary of the board and attested by the seal of the board.
3. Each licensee or permitholder shall report that ~~person's individual's~~ person's individual's licensing or renewals to the electrical inspector, if there is one, in the ~~municipality~~ city in which that ~~person individual~~ person individual operates.

**SECTION 4. AMENDMENT.** Section 43-09-09.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-09.2. Advertising prohibited - Exceptions - Liability - Penalty.**

1. Except as provided in this section, if ~~an electrical~~ license is required under section 43-09-09 ~~or by local ordinance~~, a person may not advertise to contract for electrical services without being licensed as or being associated with a class B ~~electrician~~, master electrician, or power limited electrician, unless that person intends to contract the electrical services with a licensed electrical contractor.
2. If a person associates with ~~a class B or master~~an electrician under subsection 1 and that association ends, that person is jointly and severally liable for any ~~electrical services~~ contracts entered under that association.
3. a. A person violating this section is guilty of a class B misdemeanor for a first conviction, but no fine in excess of one hundred dollars and no term of imprisonment may be imposed.
- b. A person violating this section is guilty of a class A misdemeanor for a second or subsequent conviction, but the penalties are as follows:
  - (1) For a second conviction, no fine in excess of one thousand dollars and no term of imprisonment may be imposed.
  - (2) For a third or subsequent conviction, a fine not to exceed one thousand dollars, or imprisonment not to exceed thirty days, or both, may be imposed.

**SECTION 5. AMENDMENT.** Section 43-09-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-10. Types of licenses.**

The classes of electricians who may be licensed under section 43-09-09 are:

1. Master electrician.
2. Journeyman electrician.
3. Class B electrician.
4. Power limited electrician.

<sup>138</sup> **SECTION 6. AMENDMENT.** Section 43-09-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-11. Qualifications.**

An applicant for an electrician's license must have the following experience and training:

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<sup>138</sup> Section 43-09-11 was also amended by section 1 of Senate Bill No. 2056, chapter 345.



1. For licensure as a master electrician, an applicant must have completed one year's experience as a licensed journeyman electrician.
2. For licensure as a journeyman electrician, an applicant must have:
  - a. Completed eight thousand hours' experience in installing and repairing electrical wiring, apparatus, and equipment, which experience may not be obtained in less than three years.
  - b. Effective for an applicant who registered with the board as an apprentice after January 31, 2008, completed at least one of the following:
    - (1) Successfully completed apprenticeship training approved by the federal bureau of apprenticeship and training and completed eight thousand hours' experience in installing and repairing electrical wiring, apparatus, and equipment.
    - (2) Successfully completed an appropriate course of study, which may not be less than two years or the equivalent of two years, at a board-approved institution of higher education and completed eight thousand hours' experience in installing and repairing electrical wiring, apparatus, and equipment. The board may determine equivalent hours of education that may be applied as a credit against the eight thousand hours' experience requirement under this paragraph.
3. For licensure as a class B electrician, eighteen months' experience in farmstead or residential wiring.
4. For licensure as a power limited electrician:
  - a. Hold a valid board-recognized tradesman certification; or
  - b. Possess the necessary work experience and training, as approved by the board.

**SECTION 7. AMENDMENT.** Section 43-09-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-12. Examination - Requirements.**

Each applicant for an electrician's license shall pay the examination fee and shall take an oath and submit written evidence that the applicant has had the required experience. ~~If a partnership, corporation, or limited liability company applies for a license, an officer or manager thereof shall make the application and take the oath and submit evidence as to experience.~~

**SECTION 8. AMENDMENT.** Section 43-09-13.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-13.2. Electrical inspectors Inspectors - License required - Exception.**

~~A person~~An individual employed by the state electrical board or a political subdivision to inspect electrical or power limited system installations must be licensed as a journeyman electrician or master electrician. ~~This section does not apply to an inspector employed by the electrical board or a political subdivision as of July 2, 1989.~~

<sup>139</sup> **SECTION 9. AMENDMENT.** Section 43-09-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-15. Renewal of license - Denial, suspension, or revocation of licenses.**

1. An electrician's license may be issued for a term of only one year, but may be renewed without examination upon the payment of the proper fee. If the licensee fails to renew the license for a period of three consecutive years or more, the licensee is required to appear for re-examination. The state electrical board may deny, suspend, revoke, or refuse to renew any license issued or applied for under the provisions of this chapter for any of the following reasons:
  - 1-a. Failure or refusal to maintain or adhere to the minimum standards set forth in the electrical code referred to in section 43-09-21.
  - 2-b. Any cause for which the issuance of the license could have been refused had ~~it~~that information then existed and been known to the board.
  - 3-c. Commitment of any act of gross negligence, incompetency, or misconduct in the practice of ~~a master or journeyman electrician or the business of an electrical contractor~~the profession regulated under this chapter.
  - 4-d. Material misstatement, misrepresentation, or fraud in obtaining the license.
  - 5-e. After due notice, failed or refused to correct, within the specified time, any electrical installation not in compliance with the provisions of this chapter.
  - 6-f. Failure or refusal to make a deposit or acquire public liability insurance as required by ~~sections 43-09-14 and~~section 43-09-20.
  - 7-g. Failure to ~~repay~~pay or enter into a written contract for repayment, under a payment schedule acceptable to the board, ~~of money disbursed from the fund as provided under section 43-09-14, or failure to make timely payments under a payment contract entered into under the board's policy for administering the undertaking fund~~any financial obligation to the board.
  - 8-h. Failure to furnish certification of completion of continuing education as required under section 43-09-15.1.

Any person whose

2. ~~If an individual's license is denied or whose license is, suspended, or revoked by the board, or who~~that individual is refused a license by the board, that individual may appeal to the appropriate court.

<sup>140</sup> **SECTION 10. AMENDMENT.** Section 43-09-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-15.1. Continuing education.**

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<sup>139</sup> Section 43-09-15 was also amended by section 2 of Senate Bill No. 2056, chapter 345.

<sup>140</sup> Section 43-09-15.1 was also amended by section 3 of Senate Bill No. 2056, chapter 345.

~~After March 31, 1990, each~~An applicant for renewal of an electrician's license pursuant to section 43-09-15 must have successfully completed ~~prior thereto~~ at least ~~four hours, and thereafter~~ eight hours each biennium, of continuing education relating to the standards set forth in section 43-09-21 or as otherwise prescribed by the board. The board may not require more than sixteen hours of continuing education in each biennium. The board shall conduct education sessions ~~for licensees~~ each year at not ~~less~~fewer than six locations throughout the state. Attendance at such sessions, or attendance at other education sessions certified by the board as approved, fulfills the educational requirements of this section. The board may charge a fee ~~to licensees~~ for attendance at the education sessions at an amount to be determined by the board, but not to exceed ten dollars per ~~person~~attendee for each session.

**SECTION 11. AMENDMENT.** Section 43-09-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-16. When license not required.**

The following persons ~~may not be~~not required to hold ~~an electrician's license~~licensed by and are not subject to regulation by the board under this chapter:

1. Employees of public utilities engaged in the manufacture and distribution of electrical energy ~~when~~while engaged in work directly pertaining to the manufacture and distribution of electrical energy. This exemption terminates at the first point of service attachment, except for the installing or testing of electric meters and measuring devices and the maintenance of ~~their~~service~~electric meters and measuring devices.~~
2. ~~Employees, independent contractors, or subcontractors of a company that operates or installs telephone and radio communication systems when engaged in work pertaining directly to the installation of telephone and radio communication conductors on premises where the installations are made for use exclusively for the transmission of telephone and radio signals~~is a telecommunication carrier as defined under section 57-34-01 or that is a satellite or cable systems provider, while acting in the scope of employment or the terms of the contract.
3. ~~Employees, independent contractors, or subcontractors of dealers in household appliances, such as room air-conditioners, clothes dryers, dishwashers, freezers, garbage disposals, refrigerators, stoves, washing machines, water heaters, and similar appliances when such employees are~~while installing and connecting such appliances to an existing electrical receptacle.
4. A representative of a manufacturing firm that is installing or modifying controls of wiring solely on industrial machinery that is for use by the firm itself, and performed by or under the direction of a registered professional engineer who issues a state-accepted evaluation, which is to be maintained with the equipment.
5. An individual who is installing a nonelectrical system.
6. An individual who is installing a power limited system that is installed within a residential dwelling or is installed with a factory connector or cord powered by an existing electrical receptacle.

**SECTION 12. AMENDMENT.** Section 43-09-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-18. Apprentice to master electrician.**

~~Any person~~An individual may serve as an apprentice under a licensed master electrician or power limited electrician, but a master electrician or power limited electrician may not allow an apprentice to work on any installation without personal supervision of a licensed electrician.

**SECTION 13. AMENDMENT.** Section 43-09-20 of the North Dakota Century Code is amended and reenacted as follows:

~~43-09-20. Contract for installation of electrical wiring and installation of electrical equipment~~Installations made with master electrician, class B electrician, or power limited electrician - Requirement for liability insurance.

No

1. ~~A contract, agreement, or undertaking with another person for the installation of electrical wiring or power limited wiring or the installation of electrical or power limited system parts of other apparatus may not be entered into by anyone not other than a master electrician or power limited electrician. A class B electrician, as herein defined, is authorized to may not enter into a contract, undertaking, or agreement for the installation of farmstead electrical wiring, except for:~~
  - a. ~~Farmstead electrical wiring; or residential~~
  - b. ~~Residential electrical wiring in one or two family dwellings located in municipalities a city with a population of two thousand five hundred or less population, and the electrician's authority under the contract, undertaking, or agreement is limited to the actual installation by that electrician of farmstead electrical wiring or residential electrical wiring in one or two family dwellings located in municipalities of two thousand five hundred or less population, and the installation of electrical equipment, appliances, and apparatus used on farmsteads and such residences. Before an electrician referred to in this section enters into a contract for installation of electrical wiring, the electrician shall deposit with the board fewer.~~
2. ~~If a licensee is acting as a contractor, that licensee shall submit to the board evidence of the existence of public liability insurance with a licensed insurance carrier, with policy limits of at least five hundred thousand dollars for a master electrician, and two hundred fifty thousand dollars for a class B electrician.~~

**SECTION 14. AMENDMENT.** Section 43-09-21 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-21. Standards for electrical wiring, apparatus, and equipment.**

All electrical and power limited wiring, apparatus, or equipment must comply with the rules of the board made under authority of the laws of this state and in conformity with the approved methods of construction for safety to life and property. The regulations in the national electrical code and the national electrical safety code as approved by the American national standards institute are prima facie evidence of these approved methods. ~~Any municipality~~Although a city may make more stringent requirements by ordinance, application of the ordinance must be limited to individuals

licensed by the board under this chapter. An electrical or power limited system installation may not be connected for use until proof has been furnished to the person, firm, corporation, or limited liability company supplying electrical energy that there is compliance with the applicable regulations. The manufacturer of a new manufactured building or modular unit shall make any changes required for the proof within fourteen days from the notice that the building or unit does not comply with the applicable regulations. This section does not apply to the movement of a new manufactured building or modular unit into or within this state before the process of being connected for use.

**SECTION 15. AMENDMENT.** Section 43-09-22 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-22. Inspection of installation - Condemnation.**

1. The board has jurisdiction over and shall provide inspection for all electrical installations. Inspectors~~The board has jurisdiction over and shall provide inspection for all power limited system installations. If there is a disagreement between an electrician and an inspector over interpretation or over a correction for violation issued by any inspector, the executive director of the board shall review the identified disagreement and render a final decision, which either party may appeal to the board.~~
2. The executive director of the board, as authorized by the board, may condemn installations hazardous to life and property or may order specific corrections to be made. Inspectors~~The executive director may order disconnection of service thereto discontinued after notice to the owner of the property. The order is subject to the owner's right of appeal to the board. No~~ condemned installation may not be reconnected for service until proof has been furnished that the installation has been brought up to the required standards.
3. The board may charge ~~the~~ a master electrician, class B electrician, or power limited electrician responsible for the installation a fee ~~to cover the cost of inspection for inspections.~~ Cities
4. A city may make provisions for inspection of all electrical work done and power limited systems installed within the corporate limits of the city. City inspectors~~A city shall register their names the name of the inspector with the board within ten days after their appointment. A city may not require inspection of an installation that is outside the jurisdiction of the board.~~

**SECTION 16. AMENDMENT.** Section 43-09-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-23. Criminal penalty - Civil proceedings.**

~~Any person who~~ A person that violates any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to criminal proceedings, the board may commence administrative or civil court proceedings as follows:

1. The board may issue a cease and desist order against a person allegedly making or offering to make electrical installations in violation of section 43-09-09 or 43-09-09.2 based upon information provided to the board by its electrical inspectors or other persons, by investigation reports, affidavits, complaints of witnesses, or oral testimony given to the board at a regular or special board meeting. Violation of the cease and desist order may be

considered by the court in issuing a temporary or permanent restraining order and in ordering the payment of costs and attorney's fees in proceedings authorized under this section.

2. The board may apply to the district court in the county in which the violations have occurred for a temporary or permanent injunction under chapter 32-06, enjoining persons from performing, advertising, or contracting for making electrical installations without a valid license issued by the board in violation of section 43-09-09 or 43-09-09.2. The court may not require a written undertaking, security, or bond as a basis for issuing any temporary or permanent restraining order under this section unless the court specifically orders and states the basis for requiring the security. Upon a determination that a violation of section 43-09-09 or 43-09-09.2 has occurred, the court may assess against the defendants the actual costs incurred and reasonable attorney's fees necessary for the investigation and court proceedings against the unlicensed person.
3. After an administrative hearing has been conducted by the board under chapter 28-32, an appeal from an order of the board or from the assessment of costs and attorney's fees may be taken to the district court under chapter 28-32.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 345

### SENATE BILL NO. 2056

(Senators Kannianen, Klein, Burckhard)  
(Representatives Keiser, Kempenich, Devlin)

AN ACT to amend and reenact subsection 2 of section 43-09-11 and sections 43-09-15 and 43-09-15.1 of the North Dakota Century Code, relating to electrician qualifications and license renewal; and to declare an emergency.

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

<sup>141</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 43-09-11 of the North Dakota Century Code is amended and reenacted as follows:

2. For licensure as a journeyman electrician, an applicant must have:
  - a. Completed eight thousand hours' experience in installing and repairing electrical wiring, apparatus, and equipment, which experience may not be obtained in less than three years.
  - b. Effective for an applicant who registered with the board as an apprentice after January 31, 2008, completed at least one of the following:
    - (1) Successfully completed apprenticeship training approved by the ~~federal bureau of apprenticeship and training board~~ and completed eight thousand hours' experience in installing and repairing electrical wiring, apparatus, and equipment.
    - (2) Successfully completed an appropriate course of study, which may not be less than two years or the equivalent of two years, at a board-approved institution of higher education and completed eight thousand hours' experience in installing and repairing electrical wiring, apparatus, and equipment. The board may determine equivalent hours of education that may be applied as a credit against the eight thousand hours' experience requirement under this paragraph.

<sup>142</sup> **SECTION 2. AMENDMENT.** Section 43-09-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-09-15. Renewal of license - Denial, suspension, or revocation of licenses.**

1. An electrician's license may be issued for a term of only one year, but may be renewed without examination upon the payment of the proper fee. If the licensee fails to renew the license for a period of three consecutive years or more, the licensee is required to appear for re-examination. The state

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<sup>141</sup> Section 43-09-11 was also amended by section 6 of House Bill No. 1157, chapter 344.

<sup>142</sup> Section 43-09-15 was also amended by section 9 of House Bill No. 1157, chapter 344.

electrical board may deny, suspend, revoke, or refuse to renew any license issued or applied for under ~~the provisions of~~ this chapter for any of the following reasons:

1. a. Failure or refusal to maintain or adhere to the minimum standards set forth in the electrical code referred to in section 43-09-21.
  2. b. Any cause for which the issuance of the license could have been refused had it then existed and been known to the board.
  3. c. Commitment of any act of gross negligence, incompetency, or misconduct in the practice of a master or journeyman electrician or the business of an electrical contractor.
  4. d. Material misstatement, misrepresentation, or fraud in obtaining the license.
  5. e. After due notice, failed or refused to correct, within the specified time, any electrical installation not in compliance with ~~the provisions of~~ this chapter.
  6. f. Failure or refusal to make deposit or acquire public liability insurance as required by ~~sections 43-09-14 and~~ section 43-09-20.
  7. g. Failure to repay or enter into a written contract for repayment, under a payment schedule acceptable to the board, ~~of money disbursed from the fund as provided under section 43-09-14,~~ or failure to make timely payments under a payment contract entered into under the board's policy ~~for administering the undertaking fund.~~
  8. h. Failure to furnish certification of completion of ~~continuing~~ education as required under section 43-09-15.1.
2. Any person whose license is denied or whose license is suspended or revoked by the board, or who is refused a license by the board, may appeal to the appropriate court.

<sup>143</sup> **SECTION 3. AMENDMENT.** Section 43-09-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-15.1. Continuing educationEducation.**

~~After March 31, 1990, each~~Each applicant for renewal of an electrician's license pursuant to section 43-09-15 must have successfully completed ~~prior thereto~~ at least four hours, and thereafter eight hours each biennium, of ~~continuing~~ education relating to the standards set forth in section 43-09-21 or as otherwise prescribed by the board. The board may not require more than sixteen hours of continuing education in each biennium. The board shall conduct education sessions for licensees each year at not less than six locations throughout the state. Attendance at such sessions, or attendance at other education sessions certified by the board as approved, fulfills the educational requirements of this section. The board may charge a fee to licensees for attendance at the education sessions at an amount to be determined by the board, but not to exceed ten dollars per person for each session. The board may expend funds to educate and encourage potential electricians into the trade.

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<sup>143</sup> Section 43-09-15.1 was also amended by section 10 of House Bill No. 1157, chapter 344.



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

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 346

### HOUSE BILL NO. 1078

(Representatives J. Nelson, Nathe)

AN ACT to amend and reenact section 43-10-15.4 of the North Dakota Century Code, relating to intern embalmer applications and qualifications; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 43-10-15.4 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-10-15.4. Intern embalmer - Application - Qualifications.**

1. The board shall issue a certificate of registration as an intern embalmer to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by a fee not to exceed fifty dollars, and who furnishes sufficient evidence to the board that the applicant:
  1. a. Is at least eighteen years of age;
  2. b. Is of good moral character; and
  3. c. Has completed an accredited four-year high school course of study ~~and one year of accredited college or university studies;~~
    - d. Has completed one year of accredited college or university studies; and
    - e. Has been accepted to attend or is enrolled in an accredited college of mortuary science, or has graduated from an accredited college of mortuary science.
2. An intern embalmer may not practice for more than six months before attending an accredited college of mortuary science.

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

Approved March 13, 2019

Filed March 14, 2019

## CHAPTER 347

### HOUSE BILL NO. 1345

(Representative Nathe)

AN ACT to amend and reenact section 43-11-01 of the North Dakota Century Code, relating to the practice of natural hair braiding and threading.

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

**SECTION 1. AMENDMENT.** Section 43-11-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-11-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Booth space" means that part of a licensed salon that is operated independently by an individual licensed under this chapter.
3. "Cosmetologist" means an individual licensed under this chapter to practice cosmetology.
4. "Cosmetology" means any one or a combination of practices generally and usually performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; ~~and in particular cosmetology.~~
  - a. The term includes the following or any one or a combination of these practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any ~~person~~individual 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, performing noninvasive hair removal, beautifying, or similar work on the body, manipulation of eyelashes, or manicuring the nails of any ~~person~~individual.
  - b. The term does not include natural hair braiding or threading.
5. "Cosmetology salon" includes that part of any building in which the occupation of a cosmetologist is practiced.
6. "Esthetician" means ~~a person~~an individual who is licensed by the board to engage in the practice of skin care.
7. "Homebound" means ~~any person~~an individual who is ill, disabled, or otherwise unable to travel to a salon.

8. "Instructor" means any person of the age of eighteen years or more an individual who is at least eighteen years old, 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.
9. "Invasive care" means any procedure that invades the live tissue of the dermis, including:
  - a. Laser use; and
  - b. Chemical peels using:
    - (1) Thirty percent or higher concentration of alpha hydroxy acid;
    - (2) Twenty percent or higher concentration of beta hydroxy acid;
    - (3) Two percent or higher concentration of resorcinol;
    - (4) Fifteen percent or higher concentration of trichloroacetic acid (TCA); or
    - (5) Fifteen percent or higher concentration of phenol.
10. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any ~~person~~individual.
11. "Manicurist" means ~~a person~~an individual who is licensed by the board to engage in the practice of manicuring.
12. "Master cosmetologist" means ~~any person~~an individual who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
13. "Mechanical device" means a clip, comb, crochet hook, curler, curling iron, hairpin, roller, scissors, blunt-tipped needle, thread, and hair binder.
14. "Natural hair braiding" means the service of twisting, wrapping, weaving, extending, locking, or braiding hair by hand or with a mechanical device. Natural hair braiding is commonly known as "African-style hair braiding" but is not limited to any particular cultural, ethnic, racial, or religious forms of hairstyles.
  - a. The term includes:
    - (1) The use of natural or synthetic hair extensions, natural or synthetic hair and fibers, and decorative beads and other hair accessories;
    - (2) Minor trimming of natural hair or hair extensions incidental to twisting, wrapping, weaving, extending, locking, or braiding hair;
    - (3) The making of wigs from natural hair, natural fibers, synthetic fibers, and hair extensions; and
    - (4) The use of topical agents, such as conditioners, gels, moisturizers, oils, pomades, and shampoos, in conjunction with performing services under paragraph 1 or 2.

b. The term does not include:

- (1) The application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair; or
- (2) The use of chemical hair joining agents, such as synthetic tape, keratin bonds, or fusion bonds.

15. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.

14-16. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, performing noninvasive hair removal, beautifying, or similar work on the body of any person. The term does not include invasive care or threading.

15-17. "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.

16-18. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.

17-19. "Threading" means the method of removing hair from the eyebrows, upper lip, or other body part by using cotton thread to pull hair from follicles.

a. The term may include the use of an over-the-counter astringent, gel, and powder, tweezers, and scissors, incidental to the removal of hair by threading.

b. The term does not include the use of chemicals, heat, or any type of wax.

20. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 348

### SENATE BILL NO. 2143

(Senators K. Roers, Anderson, Oban)  
(Representatives D. Anderson, P. Anderson, Rohr)

AN ACT to amend and reenact subsection 1 of section 43-12.3-06 of the North Dakota Century Code, relating to the health care professional student loan repayment program.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 43-12.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. The health council shall enter into a contract with a selected health care professional. The health council shall agree to provide student loan repayments on behalf of the selected health care professional subject to the requirements and limitations of this section.
  - a. For a physician:
    - (1) The loan repayment ~~must be equal to~~ may not exceed twenty thousand dollars per year, ~~and may not exceed one hundred thousand dollars over five years;~~ and
    - (2) The matching funds must equal fifty percent of the amount required in paragraph 1.
  - b. For a clinical psychologist:
    - (1) The loan repayment ~~must be equal to~~ may not exceed twelve thousand dollars per year, ~~and may not exceed sixty thousand dollars over five years;~~ and
    - (2) The matching funds must equal twenty-five percent of the amount required in paragraph 1.
  - c. For an advanced practice registered nurse or a physician assistant:
    - (1) The loan repayment ~~must be equal to~~ may not exceed four thousand dollars per year, ~~and may not exceed twenty thousand dollars over five years;~~ and
    - (2) The matching funds must equal ten percent of the amount required in paragraph 1.
  - d.(1) For a behavioral health professional:
    - (a)(1)The loan repayment ~~must be equal to~~ may not exceed four thousand dollars per year, ~~and may not exceed twenty thousand dollars over five years;~~ and

- 
- ~~(b)(2)~~The matching funds must equal ten percent of the amount required in ~~subparagraph a~~paragraph 1.
- ~~(2)~~e. For purposes of this ~~subdivision~~section, a behavioral health professional means an individual who practices in the behavioral health field and is:
- ~~(a)~~(1)A licensed addiction counselor;
  - ~~(b)~~(2)A licensed professional counselor;
  - ~~(c)~~(3)A licensed social worker;
  - ~~(d)~~(4)A registered nurse; or
  - ~~(e)~~(5)A specialty practice registered nurse.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 349

### SENATE BILL NO. 2323

(Senators Oban, Davison, Meyer)  
(Representatives P. Anderson, C. Johnson, Vetter)

AN ACT to amend and reenact sections 43-13-19, 43-13-20, 43-13-21.1, 43-13-22, and 43-13-26.1 of the North Dakota Century Code, relating to optometry licenses; and to repeal section 43-13-23, 43-13-24, 43-13-25, 43-13-26, and 43-13-32 of the North Dakota Century Code, relating to the state board of optometry.

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

**SECTION 1. AMENDMENT.** Section 43-13-19 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-19. License - When issued - Fee ~~–Failure to pass examination–~~ Re-examination.**

Every applicant for a license to practice optometry in this state who meets the standards required for licensure, including successfully passes ~~passing~~ the required examination shall receive a license and, must be licensed upon payment to the secretary of the board of a reasonable sum fixed by the board. ~~If the applicant fails to pass the first examination, within fourteen months thereafter the applicant may have another examination upon the payment of fifty percent of the current application fee. The examination must be given at such time and place as may be designated by the board.~~

**SECTION 2. AMENDMENT.** Section 43-13-20 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-20. Term of license - Renewal - Annual license fee - Continuing educational requirements.**

A license to practice optometry in the state may be issued for one year only, ~~but may be.~~ A license may be renewed by ~~paying~~ submitting to the secretary of the board, during the ~~month of~~ December of each year, the license fee for the following year, by submitting and satisfactory proof to the board that within the preceding three-year period the applicant ~~licensee~~ has attended optometric educational programs as required ~~met~~ all continuing education conditions set by the board. The board shall grant an applicant an additional year in which to attend the education programs if an applicant furnishes the board with sufficient proof that the applicant has been unable to attend the education programs during a year, which proof must include a physician's certificate stating that the applicant was ill and that it would have been hazardous to the applicant's health to attend the educational programs. The license fee for each year must be determined annually by the North Dakota state board of optometry and be a reasonable sum fixed by the board. The board shall adopt reasonable rules that must state the type of optometric educational programs which are approved. The board also shall designate the number of classroom hours which must be attended, which must be a reasonable amount for each three-year period. Any person who does not meet these requirements by January first of the year in which the license fee becomes due and payable is in default and may be reinstated



~~by the board upon the payment of an additional sum reasonably fixed by the board, and upon the acceptance by the board of satisfactory evidence that the person has sufficiently attended approved optometric educational programs, and upon the compliance with other reasonable conditions the board may impose. This section does not require an applicant to become a member of the North Dakota optometric association or any other association of optometrists.~~

**SECTION 3. AMENDMENT.** Section 43-13-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-21.1. Disciplinary powers of the board.**

1. The board may conduct investigations for the purpose of determining whether violations of this chapter or grounds for disciplining licensees exist. The board may establish an investigative panel to conduct an investigation under this section and may subpoena records.
2. A complaint, response, and any record received by the board during the course of the board's investigation into a complaint are exempt records, as defined in section 44-04-17.1, until the board concludes whether to pursue disciplinary action.
3. In addition to any other disciplinary actions available to the board, the board may take one or more of the following actions against an optometrist who violates the provisions of this chapter or the board's rules:
  - a. Letters of concern.
  - b. Letters of censure.
  - c. Reprimands.
  - d. Fines, including costs and attorney's fees.
  - e. Stipulations, limitations, and conditions relating to practice such as additional education and counseling.
  - f. Probation.
  - g. Suspension of the license.
  - h. Revocation of the license.
- ~~2-4.~~ The board may require a licensee to be examined on optometric knowledge and skills, if the board has just cause to believe the licensee may be so deficient in knowledge and skills as to jeopardize the health, welfare, and safety of the citizens of this state.
- ~~3-5.~~ The board may require a physical or mental evaluation as provided in section 43-13-26.1 if it has reason to believe the licensee's physical or mental condition may adversely affect the public welfare.
6. Disciplinary action must occur through an administrative hearing conducted in accordance with chapter 28-32.

**SECTION 4. AMENDMENT.** Section 43-13-22 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-22. License - When revoked.**

The

1. ~~After an administrative hearing conducted in accordance with chapter 28-32, the board may restrict, revoke, or suspend any license granted by it under the provisions of this chapter when it appears to the satisfaction of the majority of the members that the board determines~~ the holder of the license:
1. a. Has violated any provisions of this chapter, the rules and regulations of the board, or committed an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as an optometrist, or when the board determines, following conviction of a holder for any other offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1;
2. b. Has sold or distributed any drug legally classified as a controlled substance or as an addictive or dangerous drug;
3. c. Has been addicted to the excessive use of intoxicating liquor or a controlled substance for at least six months immediately prior to the filing of the charges;
4. d. Is afflicted with any contagious or infectious disease;
5. e. Is grossly incompetent to discharge the holder's duties in connection with the practice of optometry;
6. f. Has employed fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry; or
7. g. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than a licensed optometrist, a physician licensed under chapter 43-17, a hospital, or a clinic operated by licensed optometrists or by licensed physicians.
2. Any person whose license has been revoked or suspended may have the same reinstated upon satisfactory proof that the disqualification has ceased or that the disability has been removed and upon such conditions as established by the board.

**SECTION 5. AMENDMENT.** Section 43-13-26.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-26.1. Impaired optometrists.**

~~The~~After a hearing conducted pursuant to chapter 28-32, the board may restrict, suspend, or revoke the license of any licensed optometrist whose mental or physical ability to practice optometry with reasonable skill and safety is impaired.

1. For the purpose of this section, "impairment" means the inability of a licensee to practice optometry with reasonable skill and safety by reason of:

- a. Mental illness; or
  - b. Physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills.
2. The board may, upon probable cause, require a licensee or applicant to submit to a mental or physical examination by appropriate health care providers designated by the board. The results of the examination are admissible in any hearing ~~before the board~~, despite any claim of privilege under any contrary rule or statute. Every person who receives a license to practice optometry or who files an application for a license to practice optometry is deemed to have given consent to submit to the admissibility of the results in any hearing ~~before the board~~. If a licensee or applicant fails to submit to an examination when properly directed to do so by the board, unless the failure was due to circumstances deemed to be beyond the licensee's control, the board may enter a final disciplinary order upon proper notice, hearing, and proof of such refusal.
  3. If the board finds, after examination and administrative hearing, that a licensee is impaired, it may take one or more of the following actions:
    - a. Direct the licensee to submit to care, counseling, or treatment acceptable to the board; and
    - b. Suspend, limit, or restrict the optometrist's license for the duration of the impairment.
  4. Any licensee or applicant who is prohibited from practicing optometry under this section must be afforded an opportunity, at reasonable intervals, to demonstrate to the satisfaction of the board that the licensee or applicant can resume or begin the practice of optometry with reasonable skill and safety. Licensure ~~will~~may not be reinstated without the payment of ~~fifty percent~~ of the current license fee and may be subject to such reasonable restrictions as may be imposed by the board.

**SECTION 6. REPEAL.** Sections 43-13-23, 43-13-24, 43-13-25, 43-13-26, and 43-13-32 of the North Dakota Century Code are repealed.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 350

### HOUSE BILL NO. 1498

(Representatives Vigesaa, D. Anderson, Becker, Dockter, Kasper, Mock, Rohr)  
(Senators Hogue, O. Larsen, Piepkorn)

AN ACT to amend and reenact subsection 1 of section 43-15-01 and section 43-15-31.5 of the North Dakota Century Code, relating to pharmacist administration of drugs.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 43-15-01 of 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:
    - (1)~~a.~~ The emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist ~~when~~if nursing service is not available;
    - (2)~~b.~~ Upon an order by a physician, a physician assistant, or nurse practitioner authorized to prescribe such a drug or by written protocol with a physician or nurse practitioner and subsequently reported as a childhood immunization and other information if required to the state's immunization information system pursuant to section 23-01-05.3:
      - (a)~~(1)~~Immunization and vaccination by injection of an individual who is at least eleven years of age; and
      - (b)~~(2)~~Influenza vaccination by injection or by live, attenuated influenza vaccine of an individual who is at least five years of age; and
    - (3)~~c.~~ Provision of other drugs by subcutaneous, intradermal, and intramuscular injection to an individual who is at least eighteen years of age upon the order of a physician, a physician assistant, or nurse practitioner authorized to prescribe such a drug.
  - b. ~~The term does not include the regular ongoing delivery of a drug to the patient in a health care setting and other parenteral administration of a drug; and~~
  - d. Provision of drugs to an individual receiving emergency services in a health care facility upon an order or by established written protocol.

**SECTION 2. AMENDMENT.** Section 43-15-31.5 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-15-31.5. InjectionAdministration of drugs - Rules.**

~~Any~~A pharmacist who administers drugs by injection must have a certificate of authority from the board. The authority to 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~~of administration of drugs; and
  - ~~g-f.~~ Recordkeeping requirements established by law, rule, and regulation or established standards of care.
2. A requirement that an authorized pharmacist ~~must~~shall 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~~practitioner orders and protocols.
- ~~5-4.~~ 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.
- ~~6-5.~~ Requirements relating to environments in which ~~injections~~drugs may be administered.

Approved March 13, 2019

Filed March 14, 2019

## CHAPTER 351

### SENATE BILL NO. 2155

(Senators Anderson, J. Lee, Oban)  
(Representatives Beadle, Dobervich, J. Nelson)

AN ACT to create and enact a new subsection to section 43-15-02 of the North Dakota Century Code, relating to an exemption from the practice of pharmacy; and to declare an emergency.

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

**SECTION 1.** A new subsection to section 43-15-02 of the North Dakota Century Code is created and enacted as follows:

An individual licensed as a registered nurse under chapter 43-12.1, in the course of dispensing oral contraceptive pills, transdermal contraceptive patches, and vaginal contraceptive rings, pursuant to an order of an authorized prescriber, in the course of working in a Title X clinic.

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

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 352

### SENATE BILL NO. 2231

(Senators Poolman, Heckaman, Klein, J. Lee)  
(Representatives Devlin, Keiser)

AN ACT to amend and reenact section 43-15-31.4 of the North Dakota Century Code, relating to pharmacists limited prescriptive practices.

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

**SECTION 1. AMENDMENT.** Section 43-15-31.4 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-15-31.4. Limited prescriptive practices.**

1. A pharmacist has limited prescriptive practices to initiate or modify drug therapy following diagnosis or established protocols by a licensed physician or an advanced practice registered nurse, under the supervision of the licensed physician or advanced practice registered nurse, in accordance with this section. The licensed physician ~~or the advanced practice registered nurse,~~ and the pharmacist must have access to the patient's appropriate medical records. The care provided to the patient by the pharmacist must be recorded in the patient's medical records and communicated to the licensed physician or the advanced practice registered nurse.
2. The licensed physician or ~~the advanced practice registered nurse,~~ and the pharmacist, shall prepare a collaborative agreement concerning the scope of the pharmacist's prescriptive practices and shall update the agreement ~~at least every four years or when they modify~~ if the scope of the pharmacist's prescriptive practices is modified. The collaborative agreement, or an amendment to the agreement, is effective ~~when approved by the North Dakota board of medicine or board of nursing and the board of pharmacy~~ if executed by the licensed physician or advanced practice registered nurse, and the pharmacist.
3. The collaborative agreement may be between a medical director and pharmacist-in-charge. The medical director and pharmacist-in-charge shall ~~report to the respective board of~~ document and update the agreement for any physician, advanced practice registered nurse, and pharmacist covered under the agreement.
4. ~~If there is a change in personnel under the collaborative agreement, a pharmacist, physician, and advanced practice registered nurse under the collaborative agreement shall send immediate notice of the change to the respective licensing board of that individual. Unless necessary, a change in personnel does not necessitate board approval of the collaborative agreement.~~ A collaborative agreement must be made available to the respective licensing boards of the parties to the agreement.

5. The collaborative agreement must include a provision that requires the pharmacist to immediately notify the licensed physician or advanced practice registered nurse ~~when~~if the pharmacist initiates or modifies a drug therapy.
6. ~~Any rules to implement this section must be jointly adopted by the board of medicine or the board of nursing and the board of pharmacy.~~

Approved March 26, 2019

Filed March 27, 2019



## CHAPTER 353

### SENATE BILL NO. 2327

(Senators Anderson, Cook)  
(Representatives Porter, Toman)

AN ACT to create and enact a new subsection to section 43-15.3-13 of the North Dakota Century Code, relating to license exception for outsourcing facility regarding certain sales; and to declare an emergency.

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

**SECTION 1.** A new subsection to section 43-15.3-13 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding contrary provisions of this chapter, an outsourcing facility may compound and sell in the state a compounded calcium gluconate product intended for the emergency treatment of hydrofluoric acid exposure without obtaining a license under this chapter.

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

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 354

### SENATE BILL NO. 2094

(Human Services Committee)

(At the request of the North Dakota Board of Medicine)

AN ACT to create and enact sections 43-17-44, 43-17-45, and 43-62-14.1 of the North Dakota Century Code, relating to the practice of telemedicine and the regulation of fluoroscopy technologists; to amend and reenact sections 43-17-01, 43-17-02, and 43-17-02.3, subsection 1 of section 43-17.1-02, and sections 43-17.1-05, 43-17.1-05.1, and 43-17.1-06 of the North Dakota Century Code, relating to the definitions of the practice of medicine and telemedicine, the practice of medicine, and the regulation of fluoroscopy technologists; to provide a penalty; and to provide for application.

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

<sup>144</sup> **SECTION 1. AMENDMENT.** Section 43-17-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-17-01. Definitions.**

1. "Board" means the North Dakota board of medicine.
2. "Licensee" means a physician or physician assistant licensed to practice in North Dakota.
3. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).
- ~~3-4.~~ "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The following persons must be regarded as practicing medicine:
  - a. One who holds out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings.
  - b. One who suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any person, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.
  - c. One who maintains an office for the examination or treatment of persons afflicted with disease or injury of the body or mind.
  - d. One who attaches the title M.D., surgeon, doctor, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to the person's name, indicating that the person is engaged in the treatment or diagnosis of the diseases or injuries of human beings ~~must~~shall be held to be engaged in the practice of medicine.

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<sup>144</sup> Section 43-17-01 was also amended by section 1 of House Bill No. 1175, chapter 355.

5. "Telemedicine" means the practice of medicine using electronic communication, information technologies, or other means between a licensee in one location and a patient in another location, with or without an intervening health care provider. "Telemedicine" includes direct interactive patient encounters, asynchronous store-and-forward technologies, and remote monitoring.

<sup>145</sup> **SECTION 2. AMENDMENT.** Section 43-17-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02. Persons exempt from the provisions of chapter.**

The provisions of this chapter do not apply to the following:

1. Students of medicine or osteopathy who are continuing their training and performing the duties of a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any residency program accredited by the accreditation council on graduate medical education, provided that the North Dakota board of medicine may adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such persons.
2. The domestic administration of family remedies.
3. Dentists practicing their profession when properly licensed.
4. Optometrists practicing their profession when properly licensed.
5. The practice of christian science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if the person does not hold out to be a physician or surgeon.
6. Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state.
7. Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
8. Podiatrists practicing their profession when properly licensed.
9. Any person rendering services as a physician assistant, if such service is rendered under the supervision, control, and responsibility of a licensed physician. However, sections 43-17-02.1 and 43-17-02.2 do apply to physician assistants. The North Dakota board of medicine shall prescribe rules governing the conduct, licensure, fees, qualifications, discipline, activities, and supervision of physician assistants. Physician assistants may not be authorized to perform any services which must be performed by persons

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<sup>145</sup> Section 43-17-02 was also amended by section 2 of House Bill No. 1175, chapter 355.

licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding the fact that medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.

10. A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.
11. ~~A person rendering fluoroscopy services as a radiologic technologist if the service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the North Dakota board of medicine prescribes rules governing the conduct, permits, fees, qualifications, activities, discipline, and supervision of radiologic technologists who provide these services.~~
12. A naturopath duly licensed to practice in this state pursuant to the statutes regulating such profession.
13. An individual duly licensed to practice medical imaging or radiation therapy in this state under chapter 43-62.
14. An acupuncturist duly licensed to practice in this state pursuant to the statutes regulating such profession.

**SECTION 3. AMENDMENT.** Section 43-17-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02.3. Practice of medicine or osteopathy by holder of permanent, unrestricted license - Exceptions.**

The practice of medicine is deemed to occur in the state the patient is located. A practitioner providing medical care to a patient located in this state is subject to the licensing and disciplinary laws of this state and shall possess an active North Dakota license for the practitioner's profession. Notwithstanding anything in this chapter to the contrary, any physician who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any state or territory of the United States, the District of Columbia, or a province of Canada may practice medicine or osteopathy in this state without first obtaining a license from the North Dakota board of medicine under one or more of the following circumstances:

1. As a member of an organ harvest team;
2. On board an air ambulance and as a part of its treatment team;
3. To provide one-time consultation on a diagnosis for a patient to a physician licensed in the state, or teaching assistance for a period of not more than twenty-four hours seven days; or
4. To provide consultation or teaching assistance previously approved by the board for charitable organizations.

**SECTION 4.** Section 43-17-44 of the North Dakota Century Code is created and enacted as follows:

**43-17-44. Standard of care and professional ethics.**

A licensee is held to the same standard of care and same ethical standards, whether practicing traditional in-person medicine or telemedicine. The following apply in the context of telemedicine:

1. Professional ethical standards require a practitioner to practice only in areas in which the practitioner has demonstrated competence, based on the practitioner's training, ability, and experience. In assessing a licensee's compliance with this ethical requirement, the board shall give consideration to board certifications and specialty groups' telemedicine standards.
2. A licensee practicing telemedicine shall establish a bona fide relationship with the patient before the diagnosis or treatment of a patient. A licensee practicing telemedicine shall verify the identity of the patient seeking care and shall disclose, and ensure the patient has the ability to verify, the identity and licensure status of any licensee providing medical services to the patient.
3. Before initially diagnosing or treating a patient for a specific illness or condition, an examination or evaluation must be performed. An examination or evaluation may be performed entirely through telemedicine, if the examination or evaluation is equivalent to an in-person examination.
  - a. An examination utilizing secure videoconferencing or store-and-forward technology for appropriate diagnostic testing and use of peripherals that would be deemed necessary in a like in-person examination or evaluation meets this standard, as does an examination conducted with an appropriately licensed intervening health care provider, practicing within the scope of the provider's profession, providing necessary physical findings to the licensee. An examination or evaluation consisting only of a static online questionnaire or an audio conversation does not meet the standard of care.
  - b. Once a licensee conducts an acceptable examination or evaluation, whether in-person or by telemedicine, and establishes a patient-licensee relationship, subsequent followup care may be provided as deemed appropriate by the licensee, or by a provider designated by the licensee to act temporarily in the licensee's absence. In certain types of telemedicine utilizing asynchronous store-and-forward technology or electronic monitoring, such as teleradiology or intensive care unit monitoring, it is not medically necessary for an independent examination of the patient to be performed.
4. A licensee practicing telemedicine is subject to all North Dakota laws governing the adequacy of medical records and the provision of medical records to the patient and other medical providers treating the patient.
5. A licensee must have the ability to make appropriate referrals of patients not amenable to diagnosis or complete treatment through a telemedicine encounter, including a patient in need of emergent care or complementary in-person care.

**SECTION 5.** Section 43-17-45 of the North Dakota Century Code is created and enacted as follows:

**43-17-45. Prescribing - Controlled substances.**

1. A licensee who has performed a telemedicine examination or evaluation meeting the requirements of this chapter may prescribe medications according to the licensee's professional discretion and judgment. Opioids may only be prescribed through telemedicine if prescribed as a federal food and drug administration approved medication assisted treatment for opioid use disorder or to a patient in a hospital or long-term care facility. Opioids may not be prescribed through a telemedicine encounter for any other purpose.
2. A licensee who, pursuant to this chapter, prescribes a controlled substance, as defined by North Dakota law, shall comply with all state and federal laws regarding the prescribing of a controlled substance, and shall participate in the North Dakota prescription drug monitoring program.

**SECTION 6. AMENDMENT.** Subsection 1 of section 43-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a physician, ~~a or physician assistant, or a fluoroscopy technologist,~~ the president of the board ~~must~~shall designate two investigative panels, each ~~comprised~~composed of six members of the board. Five members of each panel must be physician members of the board. One member of each panel must be a public member of the board.

**SECTION 7. AMENDMENT.** Section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-17.1-05. Complaints.**

1. Any person may make or refer written complaints to the investigative panels with reference to the acts, activities, or qualifications of any physician, ~~or physician assistant, or fluoroscopy technologist~~ licensed to practice in this state, or to request that an investigative panel review the qualifications of any physician, ~~or physician assistant, or fluoroscopy technologist~~ to continue to practice in this state. Any person ~~who~~that, 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~~that makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the investigative panel shall conduct the investigation as ~~if the panel~~ if the panel deems necessary to determine whether any physician, ~~or physician assistant, or fluoroscopy technologist~~ has committed any of the grounds for disciplinary action provided for by law. Upon completion of ~~its~~the investigation ~~of the investigative panel,~~ 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, ~~or 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, ~~or physician assistant, or fluoroscopy technologist;~~ or
  - c. The conduct of the physician, ~~or physician assistant, or fluoroscopy technologist~~ indicates ~~that the physician, or physician assistant, or fluoroscopy technologist~~ may have committed any of the grounds for

disciplinary action provided for by law and which warrants further proceedings.

2. If the investigative panel determines ~~that~~ a formal hearing should be held to determine whether any licensed physician; ~~or~~ physician assistant; ~~or~~ ~~fluoroscopy~~ ~~technologist~~ has committed any of the grounds for disciplinary action provided for by law, ~~it~~ the panel shall inform the respondent physician; ~~or~~ physician assistant; ~~or~~ ~~fluoroscopy~~ ~~technologist~~ involved of the specific charges to be considered by serving upon that ~~person~~ individual a copy of a formal complaint filed with the board for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the investigative panel may not participate in any proceeding before the board relating to ~~said~~ the complaint. The complaint must be prosecuted before the board by the attorney general or one of the attorney general's assistants.
3. If an investigative panel finds ~~that~~ there are insufficient facts to warrant further investigation or action, the complaint must be dismissed and the matter is closed. The investigative panel shall provide written notice to the ~~individual or entity~~ person filing the original complaint and the ~~person~~ individual who is the subject of the complaint of the investigative panel's final action or recommendations, if any, concerning the complaint.

**SECTION 8. AMENDMENT.** Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-05.1. Reporting requirements - Penalty.**

1. A physician, a physician assistant, ~~or a fluoroscopy technologist~~, a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a licensed physician; ~~a~~ or physician assistant; ~~or a fluoroscopy technologist~~ may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board promptly shall ~~promptly~~ report that information in writing to the investigative panel of the board. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the investigative panel of the board if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment.
2. Upon receiving a report concerning a licensee an investigative panel shall, or on its own motion an investigative panel may, investigate any evidence that appears to show a licensee is or may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board.
3. A person required to report under this section ~~whethat~~ makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes of any civil proceeding, the good faith of any person ~~whothat~~ makes a report pursuant to this section is presumed. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to chapter 23-34 is not required to report pursuant to this section. A physician who does not report

information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report. For purposes of this section, a person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct.

4. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A physician, or physician assistant, ~~or fluoroscopy technologist~~ who violates this section is subject to administrative action by the board as specified by law or by administrative rule.

<sup>146</sup> **SECTION 9. AMENDMENT.** Section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-06. Powers of the board's investigative panels.**

The board's investigative panels may:

1. Subpoena witnesses and physician and hospital records relating to the practice of any physician, or physician assistant, ~~or fluoroscopy technologist~~ under investigation. The confidentiality of the records by any other statute or law does not affect the validity of an investigative panel's subpoena nor the admissibility of the records in board proceedings; however, the proceedings and records of a committee ~~that~~which are exempt from subpoena, discovery, or introduction into evidence under chapter 23-34 are not subject to this subsection.
2. Hold preliminary hearings.
3. Upon probable cause, require any physician, or physician assistant, ~~or fluoroscopy technologist~~ under investigation to submit to a physical, psychiatric, or competency examination or chemical dependency evaluation.
4. Appoint special masters to conduct preliminary hearings.
5. Employ independent investigators ~~when~~if necessary.
6. Hold confidential conferences with any complainant or any physician, or physician assistant, ~~or fluoroscopy technologist~~ with respect to any complaint.
7. File a formal complaint against any licensed physician, or physician assistant, ~~or fluoroscopy technologist~~ with the board.

**SECTION 10.** Section 43-62-14.1 of the North Dakota Century Code is created and enacted as follows:

**43-62-14.1. Fluoroscopy technologist.**

1. Effective August 1, 2019, an individual licensed or permitted as a fluoroscopy technologist by the North Dakota board of medicine who is in good standing on that date, automatically becomes licensed as a fluoroscopy technologist by the North Dakota medical imaging and radiation therapy board.

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<sup>146</sup> Section 43-17.1-06 was also amended by section 15 of Senate Bill No. 2240, chapter 225.



- a. Effective August 1, 2019, the North Dakota board of medicine shall expire every active fluoroscopy technologist's license issued by that board.
- b. Effective August 1, 2019, the North Dakota medical imaging and radiation therapy board shall issue a fluoroscopy technologist license to every individual qualified under this subsection to be automatically licensed.
2. The scope of practice of a licensed fluoroscopy technologist is limited to gastrointestinal fluoroscopy of the esophagus, stomach, and small and large intestines.
3. Fluoroscopy services provided by a licensed fluoroscopy technologist must be provided under the supervision of a primary supervising physician.
4. If a fluoroscopy technologist performs a fluoroscopy procedure outside the presence of the technologist's primary supervising physician, the technologist must be supervised by an onsite supervising physician who is immediately available to the technologist for consultation and supervision at all times the technologist is performing a fluoroscopy procedure.
5. Under this section, a supervising physician may not designate the fluoroscopy technologist to take over the physician's duties or cover the physician's practice. During an absence or temporary disability of a primary supervising physician, the fluoroscopy technologist is responsible to the substitute primary supervising physician.
6. To qualify for biennial license renewal, a fluoroscopy technologist shall submit to the board with radiography license renewal:
  - a. Evidence of completion of at least six hours of continuing education on fluoroscopy safety and relevant radiation protection; and
  - b. A copy of an agreement with a primary supervising physician.
7. A licensee under this section is subject to the disciplinary authority of the board under section 43-62-19.

**SECTION 11. APPLICATION.** To facilitate application of sections 2 and 6 through 10 of this Act, the North Dakota board of medicine shall provide the North Dakota medical imaging and radiation therapy board with the files regarding all active fluoroscopy technologists licensed by the North Dakota board of medicine necessary for the North Dakota medical imaging and radiation therapy board to take over licensure and regulation of these technologists.

Approved April 24, 2019

Filed April 24, 2019

## CHAPTER 355

### HOUSE BILL NO. 1175

(Representatives Devlin, Holman, Kading, Vigesaa)  
(Senators Bekkedahl, Heckaman, O. Larsen, Unruh)

AN ACT to amend and reenact section 43-17-01, subsection 9 of section 43-17-02, sections 43-17-02.1 and 43-17-02.2, subdivision aa of subsection 1 of section 43-17-31, and section 43-17-31.1 of the North Dakota Century Code, relating to regulation of physician assistants.

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

<sup>147</sup> **SECTION 1. AMENDMENT.** Section 43-17-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-17-01. Definitions.**

1. "Board" means the North Dakota board of medicine.
2. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).
3. "Physician assistant" means an individual issued a physician assistant license under this chapter.
4. "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The following persons ~~must be~~ regarded as practicing medicine:
  - a. ~~One who~~ A person that holds out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings.
  - b. ~~One who~~ A person that suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any ~~person~~ individual, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.
  - c. ~~One who~~ A person that maintains an office for the examination or treatment of ~~persons~~ individuals afflicted with disease or injury of the body or mind.
  - d. ~~One who~~ A person that attaches the title M.D., surgeon, doctor, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to the person's name, indicating that the person is engaged in the treatment or diagnosis of the diseases or injuries of human beings ~~must be held to be~~ engaged in the practice of medicine.

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<sup>147</sup> Section 43-17-01 was also amended by section 1 of Senate Bill No. 2094, chapter 354.

<sup>148</sup> **SECTION 2. AMENDMENT.** Subsection 9 of section 43-17-02 of the North Dakota Century Code is amended and reenacted as follows:

9. ~~Any person~~An individual rendering services as a physician assistant, ~~if such service is rendered under the supervision, control, and responsibility of a licensed physician.~~ However, sections 43-17-02.1 and 43-17-02.2 ~~do~~ apply to physician assistants. The North Dakota board of medicine shall ~~prescribe~~adopt rules governing the conduct, licensure, fees, qualifications, and discipline, ~~activities, and supervision~~ of physician assistants. Physician assistants ~~may~~are not be authorized to perform any services ~~which that~~ must be performed by persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding ~~the fact that~~ medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.

**SECTION 3. 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~~Scope of practice.**

1. ~~A physician assistant may prescribe medications as delegated to do so by a supervising physician. This may include schedule II through V controlled substances. A physician assistant who is a delegated prescriber of controlled substances must register with the federal drug enforcement administration.:~~
  - a. Provide a legal medical service for which a physician assistant is prepared by education, training, and experience and is competent to perform, including:
    - (1) Obtaining and performing a comprehensive health history and physical examination;
    - (2) Evaluating, diagnosing, managing, and providing medical treatment;
    - (3) Ordering and evaluating a diagnostic study and therapeutic procedure;
    - (4) Performing a diagnostic study or therapeutic procedure not involving the use of medical imaging as defined in section 43-62-01 or radiation therapy as defined in section 43-62-01;
    - (5) Performing limited sonography on a focused imaging target to assess specific and limited information about a patient's medical condition or to provide real-time visual guidance for another procedure;
    - (6) Educating a patient on health promotion and disease prevention;
    - (7) Providing consultation upon request; and
    - (8) Writing a medical order;
  - b. Obtain informed consent;

<sup>148</sup> Section 43-17-02 was also amended by section 2 of Senate Bill No. 2094, chapter 354.

- c. Supervise, delegate, and assign therapeutic and diagnostic measures not involving the use of medical imaging as defined in section 43-62-01 or radiation therapy as defined in section 43-62-01 to licensed or unlicensed personnel;
  - d. Certify the health or disability of a patient as required by any local, state, or federal program;
  - e. Authenticate any document with the signature, certification, stamp, verification, affidavit, or endorsement of the physician assistant if the document may be authenticated by the signature, certification, stamp, verification, affidavit, or endorsement of a physician; and
  - f. Pronounce death.
2. A physician assistant shall collaborate with, consult with, or refer to the appropriate member of the health care team as indicated by the condition of the patient, the education, experience, and competence of the physician assistant, and the standard of care. The degree of collaboration must be determined at the practice which may include decisions made by the employer, group, hospital service, and the credentialing and privileging systems of a licensed facility. A physician assistant is responsible for the care provided by that physician assistant and a written agreement relating to the items in this chapter is not required.
3. A physician assistant:
- a. May prescribe, dispense, administer, and procure drugs and medical devices;
  - b. May plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions, including durable medical equipment, nutrition, blood and blood products, and diagnostic support services, including home health care, hospice, and physical and occupational therapy;
  - c. May prescribe and dispense schedule II through V substances as designated by the federal drug enforcement agency and all legend drugs;
  - d. May not dispense a drug, unless pharmacy services are not reasonably available, dispensing is in the best interest of the patient, or an emergency exists;
  - e. May request, receive, and sign for a professional sample, and may distribute a professional sample to a patient; and
  - f. If prescribing or dispensing a controlled substance, shall register with the federal drug enforcement administration and shall comply with appropriate state and federal laws.
4. A physician assistant shall practice at a licensed health care facility, facility with a credentialing and privileging system, physician-owned facility or practice, or facility or practice approved by the board.

5. Notwithstanding subsections 2 and 4, a physician assistant with less than four thousand hours of practice approved by the board under subsection 4 shall execute a written collaborative agreement that:
  - a. Is between a physician and a physician assistant with less than four thousand hours practice;
  - b. Describes how collaboration required under subsection 2 must occur; and
  - c. Is available to the board on request.
6. A physician assistant shall comply with any privileging and credentialing systems at the facility at which the physician assistant practices.

**SECTION 4. AMENDMENT.** Section 43-17-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02.2. Physician assistant - Use of certain words or initials prohibited.**

The terms "physician assistant" and "certified physician assistant" and the initials "PA-C" may only be used to identify a person who has been issued a certificate of qualification by the North Dakota board of medicine. A person who uses those terms or initials as identification without having received a certificate of qualification is engaging in the practice of medicine without a license.

1. A person that is not a physician assistant may not:
  - a. Represent oneself as a physician assistant or act as a physician assistant;  
or
  - b. Use any combination or abbreviation of the term or title "physician assistant" or "PA" to indicate or imply the person is a physician assistant.
2. However, an individual who is not licensed as a physician assistant under this chapter but who meets the qualifications for licensure as a physician assistant under this chapter may use the title "physician assistant" or "PA" but may not act or practice as a physician assistant unless licensed under this chapter.

**SECTION 5. AMENDMENT.** Subdivision aa of subsection 1 of section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

- aa. The failure to properly monitor a ~~physician assistant~~, a fluoroscopy technologist, or an emergency medical technician.

**SECTION 6. 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 or physician assistant, the board may direct any physician or physician assistant to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and its investigative panels of the board in the investigation and prosecution of the case. ~~When~~If applicable, the physician's or physician assistant's license may be suspended until the costs are paid to the board.

A physician or physician assistant 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 or physician assistant's license may be suspended for nonpayment.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 356

### SENATE BILL NO. 2059

(Senators Clemens, Oehlke, Holmberg)  
(Representatives Damschen, B. Koppelman, Paur)

AN ACT to create and enact section 43-17-02.4 of the North Dakota Century Code, relating to licensure exemption for certain physicians.

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

**SECTION 1.** Section 43-17-02.4 of the North Dakota Century Code is created and enacted as follows:

#### **43-17-02.4. Licensure exemption for certain physicians.**

1. A physician licensed in good standing to practice in another state is exempt from the licensure requirements of this chapter if the physician:
  - a. Has a written or oral agreement with a sports team to provide care to team members and coaching staff traveling with the team for a specific sporting event in this state; or
  - b. Has been invited by a national sport governing body to provide services to team members and coaching staff at a national sport training center in this state or to provide services at an event or competition in this state which is sanctioned by the national sport governing body if:
    - (1) The physician's practice in this state is limited to the practice required by the national sport governing body; and
    - (2) The services provided by the physician are within the physician's scope of practice.
2. A physician exempt under this section may not:
  - a. Provide care or consultation to an individual residing in this state, other than an individual specified in subsection 1; or
  - b. Practice at a licensed health care facility in this state.
3. An exemption under subdivision a of subsection 1 is valid while the physician is traveling with the sports team. This exemption may not exceed ten days for each sporting event. A physician may apply to the board to receive an exemption of twenty additional days per sporting event.
4. The board may enter an agreement with a medical and osteopathic licensing board of another state to implement this section. An agreement may include a procedure for reporting a potential medical license violation.
5. The board may adopt rules to implement this section.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 357

### SENATE BILL NO. 2173

(Senators J. Lee, Anderson, Mathern)  
(Representatives Lefor, Schneider, Westlind)

AN ACT to create and enact a new section to chapter 43-17 and a new chapter to title 43 of the North Dakota Century Code, relating to the interstate medical licensure compact and the payment of fees under the compact.

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

**SECTION 1.** A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Fees levied under subsection 1 of article XIII of the interstate medical licensure compact by the interstate medical licensure compact commission to the state of North Dakota must be paid by the board through the board's funding mechanism, and the board may not request funds deposited in the general fund for the fee.

**SECTION 2.** A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

#### **ARTICLE I - PURPOSE**

In order to strengthen access to health care, and in recognition of the advances in the delivery of health care, the member states of the interstate medical licensure compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. The compact creates another pathway for licensure and does not otherwise change a state's existing medical practice act. The compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact.

#### **ARTICLE II - DEFINITIONS**

In this compact:

1. "Bylaws" means those bylaws established by the interstate commission pursuant to article XI for its governance, or for directing and controlling its actions and conduct.
2. "Commissioner" means the voting representative appointed by each member board pursuant to article XI.



3. "Conviction" means a finding by a court, that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court must be considered final for purposes of disciplinary action by a member board.
4. "Expedited license" means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact.
5. "Interstate commission" means the interstate commission created pursuant to article XI.
6. "License" means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.
7. "Medical practice act" means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state.
8. "Member board" means a state agency in a member state which acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government.
9. "Member state" means a state that has enacted the compact.
10. "Offense" means a felony, gross misdemeanor, or crime of moral turpitude.
11. "Physician" means any individual who:
  - a. Is a graduate of a medical school accredited by the liaison committee on medical education, the commission on osteopathic college accreditation, or a medical school listed in the international medical education directory or its equivalent;
  - b. Passed each component of the United States medical licensing examination (USMLE) or the comprehensive osteopathic medical licensing examination (COMLEX-USA) within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;
  - c. Successfully completed graduate medical education approved by the accreditation council for graduate medical education or the American osteopathic association;
  - d. Holds specialty certification or a time-unlimited specialty certificate recognized by the American board of medical specialties or the American osteopathic association's bureau of osteopathic specialists;
  - e. Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;
  - f. Has never been convicted or received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

- g. Has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;
  - h. Has never had a controlled substance license or permit suspended or revoked by a state or the United States drug enforcement administration; and
  - i. Is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.
12. "Practice of medicine" means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the medical practice act of a member state.
13. "Rule" means a written statement by the interstate commission promulgated pursuant to article XII of the compact, that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.
14. "State" means any state, commonwealth, district, or territory of the United States.
15. "State of principal license" means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the compact.

### **ARTICLE III - ELIGIBILITY**

1. A physician must meet the eligibility requirements as defined in subsection 11 of article II to receive an expedited license under the terms and provisions of the compact.
2. A physician who does not meet the requirements of subsection 11 of article II may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.

### **ARTICLE IV - DESIGNATION OF STATE OF PRINCIPAL LICENSE**

1. A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:
  - a. The state of primary residence for the physician;
  - b. The state where at least twenty-five percent of the practice of medicine occurs;
  - c. The location of the physician's employer; or

- d. If no state qualifies under subdivision a, b, or c, the state designated as state of residence for purpose of federal income tax.
2. A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection 1.
3. The interstate commission may develop rules to facilitate redesignation of another member state as the state of principal license.

#### **ARTICLE V - APPLICATION AND ISSUANCE OF EXPEDITED LICENSURE**

1. A physician seeking licensure through the compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.
2. Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the interstate commission.
  - a. Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the interstate commission through rule, may not be subject to additional primary source verification if already primary source verified by the state of principal license.
  - b. The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the federal bureau of investigation, with the exception of federal employees who have suitability determination in accordance with title 5, Code of Federal Regulations, section 731.202.
  - c. Appeal on the determination of eligibility must be made to the member state where the application was filed and must be subject to the law of that state.
3. Upon verification in subsection 2, physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to subsection 1, including the payment of any applicable fees.
4. After receiving verification of eligibility under subsection 2 and any fees under subsection 3, a member board shall issue an expedited license to the physician. This license must authorize the physician to practice medicine in the issuing state consistent with the medical practice act and all applicable laws and regulations of the issuing member board and member state.
5. An expedited license must be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

6. An expedited license obtained through the compact must be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.
7. The interstate commission may develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

#### **ARTICLE VI - FEES FOR EXPEDITED LICENSURE**

1. A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the compact.
2. The interstate commission may develop rules regarding fees for expedited licenses.

#### **ARTICLE VII - RENEWAL AND CONTINUED PARTICIPATION**

1. A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:
  - a. Maintains a full and unrestricted license in a state of principal license;
  - b. Has not been convicted or received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;
  - c. Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and
  - d. Has not had a controlled substance license or permit suspended or revoked by a state or the United States drug enforcement administration.
2. Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.
3. The interstate commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.
4. Upon receipt of any renewal fees collected in subsection 3, a member board shall renew the physician's license.
5. Physician information collected by the interstate commission during the renewal process must be distributed to all member boards.
6. The interstate commission may develop rules to address renewal of licenses obtained through the compact.

**ARTICLE VIII - COORDINATED INFORMATION SYSTEM**

1. The interstate commission shall establish a database of all physicians licensed, or who have applied for licensure, under article V.
2. Notwithstanding any other provision of law, member boards shall report to the interstate commission any public action or complaints against a licensed physician who has applied or received an expedited license through the compact.
3. Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the interstate commission.
4. Member boards may report any nonpublic complaint, disciplinary, or investigatory information not required by subsection 3 to the interstate commission.
5. Member boards shall share complaint or disciplinary information about a physician upon request of another member board.
6. All information provided to the interstate commission or distributed by member boards must be confidential, filed under seal, and used only for investigatory or disciplinary matters.
7. The interstate commission may develop rules for mandated or discretionary sharing of information by member boards.

**ARTICLE IX - JOINT INVESTIGATIONS**

1. Licensure and disciplinary records of physicians are deemed investigative.
2. In addition to the authority granted to a member board by its respective medical practice act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.
3. A subpoena issued by a member state must be enforceable in other member states.
4. Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.
5. Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

**ARTICLE X - DISCIPLINARY ACTIONS**

1. Any disciplinary action taken by any member board against a physician licensed through the compact must be deemed unprofessional conduct, which may be subject to discipline by other member boards, in addition to any violation of the medical practice act or regulations in that state.
2. If a license granted to a physician by the member board in the state of principal license is revoked, surrendered, or relinquished in lieu of discipline or

suspended, all licenses issued to the physician by member boards must automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board must remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the medical practice act of that state.

3. If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:
  - a. Impose the same or lesser sanction against the physician so long as such sanctions are consistent with the medical practice act of that state; or
  - b. Pursue separate disciplinary action against the physician under its respective medical practice act, regardless of the action taken in other member states.
4. If a license granted to a physician by a member board is revoked, surrendered, or relinquished in lieu of discipline, or suspended, any license issued to the physician by any other member board must be suspended, automatically and immediately without further action necessary by the other member board, for ninety days upon entry of the order by the disciplining board, to permit the member board to investigate the basis for the action under the medical practice act of that state. A member board may terminate the automatic suspension of the license it issued before the completion of the ninety-day suspension period in a manner consistent with the medical practice act of that state.

#### **ARTICLE XI - INTERSTATE MEDICAL LICENSURE COMPACT COMMISSION**

1. The member states hereby create the interstate medical licensure compact commission.
2. The purpose of the interstate commission is the administration of the interstate medical licensure compact, which is a discretionary state function.
3. The interstate commission must be a body corporate and joint agency of the member states and must have all the responsibilities, powers, and duties set forth in the compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.
4. The interstate commission must consist of two voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one representative from each member board. A commissioner must be:
  - a. An allopathic or osteopathic physician appointed to a member board;
  - b. An executive director, executive secretary, or similar executive of a member board; or

- c. A member of the public appointed to a member board.
5. The interstate commission shall meet at least once each calendar year. A portion of this meeting must be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.
6. The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.
7. Each commissioner participating at a meeting of the interstate commission is entitled to one vote. A majority of commissioners constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. A commissioner may not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another individual from that state who must meet the requirements of subsection 4.
8. The interstate commission shall provide public notice of all meetings and all meetings must be open to the public. The interstate commission may close a meeting, in full or in portion, if it determines by a two-thirds vote of the commissioners present that an open meeting would be likely to:
- a. Relate solely to the internal personnel practices and procedures of the interstate commission;
  - b. Discuss matters specifically exempted from disclosure by federal statute;
  - c. Discuss trade secrets, commercial, or financial information that is privileged or confidential;
  - d. Involve accusing a person of a crime, or formally censuring a person;
  - e. Discuss information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - f. Discuss investigative records compiled for law enforcement purposes; or
  - g. Specifically relate to the participation in a civil action or other legal proceeding.
9. The interstate commission shall keep minutes that fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.
10. The interstate commission shall make its information and official records, to the extent not otherwise designated in the compact or by its rules, available to the public for inspection.
11. The interstate commission shall establish an executive committee, which must include officers, members, and others as determined by the bylaws. The executive committee must have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. If acting on behalf of the interstate

commission, the executive committee shall oversee the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as necessary.

12. The interstate commission may establish other committees for governance and administration of the compact.

## **ARTICLE XII - POWERS AND DUTIES OF THE INTERSTATE COMMISSION**

The interstate commission has the duty and power to:

1. Oversee and maintain the administration of the compact;
2. Promulgate rules that must be binding to the extent and in the manner provided for in the compact;
3. Issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, and actions;
4. Enforce compliance with compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including the use of judicial process;
5. Establish and appoint committees including, an executive committee as required by article XI which may act on behalf of the interstate commission in carrying out its powers and duties;
6. Pay, or provide for the payment of the expenses related to the establishment, organization, and ongoing activities of the interstate commission;
7. Establish and maintain one or more offices;
8. Borrow, accept, hire, or contract for services of personnel;
9. Purchase and maintain insurance and bonds;
10. Employ an executive director who must have such powers to employ, select, or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;
11. Establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
12. Accept donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the interstate commission;
13. Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed;
14. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
15. Establish a budget and make expenditures;



16. Adopt a seal and bylaws governing the management and operation of the interstate commission;
17. Report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year. Such reports must also include reports of financial audits and any recommendations that may have been adopted by the interstate commission;
18. Coordinate education, training, and public awareness regarding the compact, its implementation, and its operation;
19. Maintain records in accordance with the bylaws;
20. Seek and obtain trademarks, copyrights, and patents; and
21. Perform such functions as may be necessary or appropriate to achieve the purposes of the compact.

### **ARTICLE XIII - FINANCE POWERS**

1. The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.
2. The interstate commission may not incur obligations of any kind before securing the funds adequate to meet the same.
3. The interstate commission may not pledge the credit of any of the member states, except by, and with the authority of, the member state.
4. The interstate commission must be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit must be included in the annual report of the interstate commission.

### **ARTICLE XIV - ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION**

1. The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact within twelve months of the first interstate commission meeting.
2. The interstate commission shall elect or appoint annually from among its commissioners a chairperson, a vice chairperson, and a treasurer, each of whom must have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission.
3. Officers selected in subsection 2 shall serve without remuneration from the interstate commission.

4. The officers and employees of the interstate commission must be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such individual had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided that such individual may not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such individual.
  - a. The liability of the executive director and employees of the interstate commission or representatives of the interstate commission, acting within the scope of such individual's employment or duties for acts, errors, or omissions occurring within such individual's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. This subsection may not be construed to protect such individual from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such individual.
  - b. The interstate commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such individual.
  - c. To the extent not covered by the state involved, member state, or the interstate commission, the representatives, or employees of the interstate commission must be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such individuals arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such individuals had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such individuals.

#### **ARTICLE XV - RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION**

1. The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, if the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted under the compact, such an action by the interstate commission must be invalid and have no force or effect.

2. Rules deemed appropriate for the operations of the interstate commission must be made pursuant to a rulemaking process that substantially conforms to the model state administrative procedure act of 2010, and subsequent amendments thereto.
3. Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States district court for the District of Columbia or the federal district where the interstate commission has its principal offices, provided that the filing of such a petition may not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the interstate commission.

#### **ARTICLE XVI - OVERSIGHT OF INTERSTATE COMPACT**

1. The executive, legislative, and judicial branches of state government in each member state shall enforce the compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of the compact and the rules promulgated under the compact must have standing as statutory law but may not override existing state authority to regulate the practice of medicine.
2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact which may affect the powers, responsibilities, or actions of the interstate commission.
3. The interstate commission must be entitled to receive all service of process in any such proceeding, and must have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission renders a judgment or order void as to the interstate commission, the compact, or promulgated rules.

#### **ARTICLE XVII - ENFORCEMENT OF INTERSTATE COMPACT**

1. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact.
2. The interstate commission may, by majority vote of the commissioners, 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 where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party must be awarded all costs of such litigation including reasonable attorney's fees.
3. The remedies in this chapter may not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

**ARTICLE XVIII - DEFAULT PROCEDURES**

1. The grounds for default, include failure of a member state to perform such obligations or responsibilities imposed upon it by the compact or the rules and bylaws of the interstate commission promulgated under the compact.
2. If the interstate commission determines a member state has defaulted in the performance of its obligations or responsibilities under the compact, or the bylaws or promulgated rules, the interstate commission shall:
  - a. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and
  - b. Provide remedial training and specific technical assistance regarding the default.
3. If the defaulting state fails to cure the default, the defaulting state must be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges, and benefits conferred by the compact must terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.
4. Termination of membership in the compact must be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate must be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.
5. The interstate commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state or the withdrawal of a member state.
6. The member state that has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination, including obligations the performance of which extends beyond the effective date of termination.
7. The interstate commission may not bear any costs relating to any state that has been found to be in default or which has been terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.
8. The defaulting state may appeal the action of the interstate commission by petitioning the United States district court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party must be awarded all costs of such litigation including reasonable attorney's fees.

**ARTICLE XIX - DISPUTE RESOLUTION**

1. The interstate commission shall attempt, upon the request of a member state, to resolve disputes that are subject to the compact and which may arise among member states or member boards.
2. The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

**ARTICLE XX - MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT**

1. Any state is eligible to become a member state of the compact.
2. The compact must become effective and binding upon legislative enactment of the compact into law by no less than seven states. Thereafter, the compact must become effective and binding on a state upon enactment of the compact into law by that state.
3. The governors of nonmember states, or their designees, must be invited to participate in the activities of the interstate commission on a nonvoting basis before adoption of the compact by all states.
4. The interstate commission may propose amendments to the compact for enactment by the member states. An amendment may not become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

**ARTICLE XXI - WITHDRAWAL**

1. Once effective, the compact must continue in force and remain binding upon each and every member state, provided that a member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.
2. Withdrawal from the compact must be by the enactment of a statute repealing the same, but may not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.
3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.
4. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt of notice provided under subsection 3.
5. The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.
6. Reinstatement following withdrawal of a member state must occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

7. The interstate commission may develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

#### **ARTICLE XXII - DISSOLUTION**

1. The compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.
2. Upon the dissolution of the compact, the compact becomes null and void and must be of no further force or effect, and the business and affairs of the interstate commission must be concluded and surplus funds must be distributed in accordance with the bylaws.

#### **ARTICLE XXIII - SEVERABILITY AND CONSTRUCTION**

1. The provisions of the compact must be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact must be enforceable.
2. The provisions of the compact must be liberally construed to effectuate its purposes.
3. The compact may not be construed to prohibit the applicability of other interstate compacts to which the states are members.

#### **ARTICLE XXIV - BINDING EFFECT OF COMPACT AND OTHER LAWS**

1. This chapter does not prevent the enforcement of any other law of a member state that is not inconsistent with the compact.
2. All laws in a member state in conflict with the compact are superseded to the extent of the conflict.
3. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.
4. All agreements between the interstate commission and the member states are binding in accordance with their terms.
5. If any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision must be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 358

### HOUSE BILL NO. 1387

(Representatives Beadle, Boschee, Klemin, Satrom)  
(Senators Burckhard, Dotzenrod, Unruh)

AN ACT to create and enact section 43-19.1-16.2 of the North Dakota Century Code, relating to qualifications of land surveyor interns; to amend and reenact sections 43-19.1-16 and 43-19.1-16.1 of the North Dakota Century Code, relating to regulation of land surveyors and land surveyor interns; to repeal section 43-19.1-16.1 of the North Dakota Century Code, relating to qualifications of land surveyor interns; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 43-19.1-16 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-19.1-16. Registration - Professional land surveyor.**

~~Any~~An individual who shows, to the satisfaction of the board, that the individual is otherwise qualified and is over the age of eighteen years is eligible for registration as a professional land surveyor, if the individual has passed a board-approved examination regarding state laws and rules or other surveying issues specific to the state and:

1.  ~~Holds a certificate of registration to engage in the practice of land surveying issued on the basis of a minimum sixteen-hour written examination by proper authority of a state, territory, possession of the United States, the District of Columbia, or any foreign country, based on requirements and qualifications as shown by the individual's application which, in the opinion of the board, are equal to or higher than the requirements of this chapter;~~
2.  ~~Has~~ Holds a baccalaureate degree in engineering or surveying from an institution that offers accredited programs approved by the board, followed by at least four years of certificate as a land surveying experience of a character satisfactory to surveyor intern issued by the board, who has passed a written examination of at least sixteen hours designed to show that the individual is qualified to practice land surveying; and:
  - a. In addition to experience that may be required to qualify for certification as a land surveyor intern, completed at least four years of land surveying experience of a character satisfactory to the board; and
  - b. Passed a board-approved written examination in the principles and practice of land surveying; or
3.  ~~Has at least eight years of active experience in land surveying of a character satisfactory to the board, and who has passed a written examination of at least sixteen hours designed to show that the individual is qualified to practice land surveying; or~~

4. Is registered as a land surveyor by the state of North Dakota, under the provisions of former chapter 43-24, on the thirtieth day of June 1967.

**SECTION 2. AMENDMENT.** Section 43-19.1-16.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-19.1-16.1. Qualifications of land surveyor interns.**

1. Before July 1, 2028, an applicant for certification as a land surveyor intern may qualify for certification by meeting the requirements of this section or section 43-19.1-16.2. After June 30, 2028, a qualified applicant for certification as a land surveyor intern must meet the requirements of section 43-19.1-16.2.
2. An applicant for certification as a land surveyor intern who has at least four years of qualifying land surveying experience of a character satisfactory to the board, of which a formal education in an accredited engineering or land surveying curriculum may constitute a part thereof, may receive from the board, upon passing a written examination on the fundamentals of mathematics and the basic principles of land surveying, a certificate stating that the applicant has passed the examination and been recorded as a land surveyor intern.

**SECTION 3.** Section 43-19.1-16.2 of the North Dakota Century Code is created and enacted as follows:

**43-19.1-16.2. Qualifications of land surveyor interns.**

The board shall certify as a land surveyor intern an otherwise qualified applicant who has passed a board-approved written examination on the fundamentals of mathematics and the basic principles of land surveying and:

1. Has a baccalaureate degree in land surveying from an institution that offers board-approved accredited programs;
2. Has a baccalaureate degree in a board-approved program other than land surveying and:
  - a. Has board-approved educational training in land surveying in connection with the baccalaureate degree or other program; and
  - b. Has at least two years of qualifying land surveying experience of a character satisfactory to the board;
3. Has an associate degree in land surveying from a board-approved program and has at least two years of qualifying land surveying experience of a character satisfactory to the board; or
4. Has a certificate in land surveying from an institution that offers a board-approved program and has at least four years of qualifying land surveying experience of a character satisfactory to the board.

**SECTION 4. REPEAL.** Section 43-19.1-16.1 of the North Dakota Century Code is repealed.

**SECTION 5. EFFECTIVE DATE.** Section 4 of this Act becomes effective July 1, 2028.

Approved March 20, 2019

Filed March 21, 2019



## CHAPTER 359

### HOUSE BILL NO. 1250

(Representative Louser)

AN ACT to amend and reenact section 43-23-05.1 of the North Dakota Century Code, relating to licensure of organization of a real estate salesperson, broker, or broker associate.

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

**SECTION 1. AMENDMENT.** Section 43-23-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-05.1. Organization of salesperson, broker, or broker associate permitted to be licensed - Fees.**

1. The commission may license an organization of a salesperson, broker, or broker associate if:
  - a. The organization is owned solely by an individual who is licensed as a salesperson, broker, or broker associate, or by that individual and that individual's spouse, or by that individual and other salespersons, brokers, and broker associates within the same firm as that individual;
  - b. The organization does not engage in any real estate transactions as a third-party agent or in any other capacity requiring a license under this chapter; and
  - c. The organization does not advertise or otherwise portray to the public that the organization is a real estate broker or real estate brokerage firm.
2. The employing or associating broker of a salesperson, broker, or broker associate who is part of an organization is not relieved of any obligation to supervise the employed or associated salesperson, broker, or broker associate or of any other requirements under this chapter.
3. An individual who forms an organization is not by nature of that act relieved of any personal liability for licensed activities.
4. The commission may adopt rules establishing a one-time license fee for an organization licensed as a salesperson, broker, or broker associate.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 360

### HOUSE BILL NO. 1281

(Representatives Beadle, Boschee, Louser)  
(Senator Meyer)

AN ACT to amend and reenact subsection 4 of section 43-23-08 of the North Dakota Century Code, relating to the required number of continuing education hours for a real estate salesperson; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 43-23-08 of the North Dakota Century Code is amended and reenacted as follows:

4. As a prerequisite for licensure, an applicant for a salesperson's license shall furnish to the commission evidence the applicant has successfully completed at least ~~forty-five~~<sup>ninety</sup> hours in courses of study approved by the commission. ~~Within one year after initial licensure as a salesperson, the salesperson's broker shall furnish to the commission evidence of the salesperson's successful completion of fifteen postlicensure hours in courses of study approved by the commission.~~ An applicant for a broker's license must have successfully completed an additional sixty hours in courses of study approved by the commission. An applicant for a salesperson's license may take the licensing examination before fulfillment of the prerequisite educational requirement; however, the commission may not issue a salesperson's license to an applicant unless satisfactory evidence of completion of this prerequisite educational requirement is furnished to the commission. An applicant for a broker's license must have satisfactorily fulfilled the educational requirement before taking the broker's licensing examination.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on January 1, 2021.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 361

### SENATE BILL NO. 2075

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Appraiser Qualifications and Ethics Board)

AN ACT to amend and reenact sections 43-23.5-07, 43-23.5-08, and 43-23.5-12 of the North Dakota Century Code, relating to appraisal management companies.

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

**SECTION 1. AMENDMENT.** Section 43-23.5-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-23.5-07. Exemptions.**

The provisions of this chapter shalldo not apply to:

1. An appraisal firm.
2. A financial institution, including a department or unit within the institution, that is regulated by an agency of this state or the United States government.
3. A person ~~who~~that enters an agreement with an appraiser for the performance of an appraisal that upon completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal.
4. An appraisal management company with an appraisal panel of ~~not more~~fewer than ~~fifteen~~sixteen certified or licensed appraisers in this state or fewer than twenty-five ~~or more~~ nationally within a given year.
5. An appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as stringent as those under chapter 43-23.5-21, if regulated by an agency of this state, or the Truth in Lending Act [15 U.S.C. 1601 et seq.], if regulated by the United States government.

**SECTION 2. AMENDMENT.** Section 43-23.5-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-23.5-08. Owner requirements.**

1. An appraisal management company applying for, holding, or renewing a registration under this chapter shallmay not be ~~more than ten percent~~ owned by:
  - a. ~~A person~~An individual who has had an appraiser license or certification in this state or in any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently granted or reinstated.

- b. An entity that is ~~more than ten percent~~ owned by any person ~~individual~~ who has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently granted or reinstated.
2. Each person that owns more than ten percent of an appraisal management company applying for, holding, or renewing a registration under this chapter shall:
  - a. ~~Be~~Must be of good moral character.
  - b. ~~Submit~~Shall submit to a criminal background investigation for an initial application or as required by the board.
3. Each appraisal management company applying for a registration or for renewal of a registration under this chapter shall certify to the board on a form prescribed by the board that the company has reviewed each entity that owns ~~more than ten percent~~ of the appraisal management company and that no entity that owns ~~more than ten percent~~ of the appraisal management company is ~~more than ten percent~~ owned by any person that has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently granted or reinstated.

**SECTION 3. AMENDMENT.** Section 43-23.5-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.5-12. Appraisal review.**

Any employee of, or independent contractor to, the appraisal management company that performs an appraisal review for a property located in this state must be:

1. A certified or licensed appraiser in good standing in this state; or
2. A certified or licensed appraiser in good standing in another state.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 362

### HOUSE BILL NO. 1172

(Representative Keiser)

AN ACT to amend and reenact section 43-25-05.1 of the North Dakota Century Code, relating to reporting requirements of the board of massage therapy.

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

**SECTION 1. AMENDMENT.** Section 43-25-05.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-25-05.1. 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 periodically shall inspect or cause to be inspected all massage establishments. The board and the board's agents may enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.
3. ~~The~~In accordance with the guidelines established for reports under section 54-06-04, the board shall prepare and submit to ~~the governor~~ a biennial report detailing income and expenses and a list of licensed massage therapists.
4. The board may hire office personnel deemed necessary by the board for carrying on the board's official duties and shall set the compensation to be paid to the personnel.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 363

### SENATE BILL NO. 2125

(Senators Burckhard, Anderson, Oban)  
(Representatives D. Anderson, Dobervich, Karls)

AN ACT to create and enact a new subsection to section 43-26.1-10, a new subsection to section 43-26.1-13, and a new subsection to section 43-26.1-15 of the North Dakota Century Code, relating to the regulation of the practice of physical therapy; and to amend and reenact sections 43-26.1-01, 43-26.1-02, 43-26.1-03, 43-26.1-04, 43-26.1-05, 43-26.1-08, 43-26.1-11, and 43-26.1-14 of the North Dakota Century Code, relating to the board of physical therapy and physical therapy licensure; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 43-26.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-26.1-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of physical therapy.
2. "Competence" is the application of knowledge, skills, and behaviors required to function effectively, safely, ethically, and legally within the context of the patient's or client's environment.
3. "Continuing competence" is the lifelong process of maintaining and documenting competence through ongoing self-assessment, development, and implementation of a personal learning plan along with subsequent reassessment.
4. "Direct supervision" means the supervising physical therapist is physically present on the premises and immediately available for direction and supervision, has direct contact with the patient during each visit, and completes all components of care requiring skilled therapy services. Telehealth does not meet the requirement for direct supervision.
5. "Electronic communications" means the science and technology of communication over a distance by electronic transmission of impulses, including activities involving or using electronic communications to store, organize, send, retrieve, and convey information.
6. "Examination" means a national examination approved by the board for the licensure of a physical therapist or the licensure of a physical therapist assistant.
- 3-7. "General supervision" means the supervising physical therapist is onsite and present where services are provided or is immediately available to the physical therapist assistant being supervised by means of electronic

communications, maintains continual involvement in the appropriate aspects of patient care, and has primary responsibility for all patient care services rendered by a physical therapist assistant.

8. "Manual therapy" means the use of techniques such as mobilization or manipulation, manual lymphatic drainage, and manual traction on one or more regions of the body.
- 4-9. "Onsite supervision" means the supervising physical therapist is onsite and present in the department or facility where services are provided, is immediately available to the ~~person~~individual being supervised, and maintains continued involvement in appropriate aspects of each treatment session in which a student physical therapist or a student physical therapist assistant or a physical therapy aide is involved in components of care.
- 5-10. "Physical therapist" means a ~~person~~an individual licensed under this chapter to practice physical therapy. The term "physiotherapist" is synonymous with "physical therapist" under this chapter.
- 6-11. "Physical therapist assistant" means a ~~person who is~~an individual licensed under this chapter and who assists the physical therapist in selected components of physical therapy intervention.
- 7-12. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist licensed under this chapter.
- 8-13. "Physical therapy aide" means a ~~person~~an individual trained under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy.
- 9-14. "Practice of physical therapy" means:
- Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement and mobility, and disabilities or other health and movement-related conditions ~~in order~~ to determine a diagnosis for physical therapy, prognosis, and plan of therapeutic intervention, and to assess the ongoing effects of intervention.
  - Alleviating impairments, functional limitations in movement and mobility, and disabilities by designing, implementing and modifying therapeutic interventions that may include, ~~but are not limited to,~~ therapeutic exercise; neuromuscular education; functional training related to positioning, movement, and mobility in self-care and in-home, community, or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective, and supportive devices and equipment related to positioning, movement, and mobility; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physiotherapy; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction.

- c. Engaging as a physical therapist in reducing the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health, and wellness in populations of all ages.
- d. Engaging as a physical therapist in administration, consultation, education, and research.

40-15. "Restricted license" for a physical therapist or physical therapist assistant means a license on which the board places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the licensee may provide services.

44-16. "Telehealth" is the use of electronic communications to provide and deliver health-related information and health care services, including physical therapy related information and services, over any distance. Telehealth encompasses health care and health promotion activities, including education, advice, reminders, interventions, and the monitoring of interventions.

17. "Testing" means standard methods and techniques used to gather data about the patient.

**SECTION 2. AMENDMENT.** Section 43-26.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-26.1-02. Board of physical therapy - Members - Appointments - Vacancies.**

1. The board of physical therapy shall administer this chapter. The board consists of three licensed physical therapists, ~~two~~one licensed ~~physicians~~physician, one licensed physical therapist assistant, and ~~a citizen who is not a health care professional~~two public members. The governor shall appoint the board members for a term of five years, staggered so the terms of no more than two members expire each year. A ~~person~~individual may not serve more than two full consecutive terms. Terms begin on July first. Appointments to the board to fill a vacancy occurring for other than the expiration of a term may only be made for the remainder of the unexpired term.
2. Each physical therapist and physical therapist assistant appointed must have had at least three years of physical therapy experience in North Dakota immediately ~~prior to~~before appointment and must practice in North Dakota during the term. ~~Each~~The physician appointed must have practiced medicine at least three years in North Dakota immediately ~~prior to~~before appointment and must practice in North Dakota during the term. Each board member shall take and file with the secretary of state the oath of office prescribed for state officials before entering upon the discharge of the member's duties.
3. Each board member is entitled to mileage reimbursement as provided in section 54-06-09 and reimbursement for actual and necessary expenses in the amounts provided by law for state officers in section 44-08-04.

**SECTION 3. AMENDMENT.** Section 43-26.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-26.1-03. Powers of the board.**



The board may:

1. Evaluate the qualifications of applicants for licensure.
2. Provide for the examination of physical therapists and physical therapist assistants and adopt passing scores for the examinations.
3. Issue licenses to persons who meet the requirements of this chapter.
4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.
5. Adopt and revise rules consistent with this chapter.
6. Meet at least annually and ~~such~~ other times as deemed necessary. A majority of board members ~~shall constitute~~constitutes a quorum for the transaction of business.
7. Establish mechanisms for assessing the continuing professional competence of physical therapists and physical therapist assistants to engage in the practice of physical therapy.
8. Establish and collect fees for sustaining the necessary operation and expenses of the board.
9. Elect officers from its members necessary for the operations and obligations of the board. Terms of office ~~shall be~~are one year.
10. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, and board rules, policies, and procedures.
11. Maintain a current list of all ~~persons~~individuals regulated under this chapter. This contact information includes the ~~person's~~individual's name, current business address, business telephone number, electronic mail address, and board license number.
12. Provide information to the public regarding the complaint process.
13. Employ necessary personnel to carry out the administrative work of the board.
14. Enter ~~into~~ contracts for services necessary for enforcement of this chapter.
15. Report final disciplinary action taken against a licensee to a national disciplinary database recognized by the board or as required by law.
16. Review and investigate all complaints the board receives against licensees concerning violations of this chapter. The board shall keep all information relating to the receipt and investigation of the complaint confidential until the information is disclosed in the course of the investigation or any subsequent proceeding or until disclosure is required by law. However, patient records, including clinical records, files, any report or oral statement relating to diagnostic findings of a patient or treatment of a patient, any information from which a patient or the patient's family might be identified, or information received and records or reports kept by the board as a result of its investigation, are confidential.

**SECTION 4. AMENDMENT.** Section 43-26.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-26.1-04. Qualifications for licensure.**

1. Before being approved for a license as a physical therapist or physical therapist assistant, an applicant shall:
  - a. ~~Be~~Must be of good moral character.
  - b. ~~Complete~~Shall complete the application process.
  - c. ~~Be~~Must be a graduate of a professional physical therapy~~therapist or physical therapist assistant~~ education program accredited by a national accreditation agency approved by the board.
  - d. ~~Pass~~Shall pass the examination approved by the board.
2. An applicant for a license as a physical therapist or a physical therapist assistant who has been educated outside of the United States shall:
  - a. ~~Be~~Must be of good moral character.
  - b. ~~Complete~~Shall complete the application process.
  - c. ~~Provide~~Shall provide satisfactory evidence ~~that~~ the applicant's education is substantially equivalent to the requirements of a physical therapist~~therapist or physical therapist assistant~~ educated in an accredited education program as determined by the board. For the purpose of this section, "substantially equivalent" means ~~that~~ an applicant for licensure educated outside of the United States ~~shall~~must have:
    - (1) Graduated from a physical therapist or physical therapist assistant education program that prepares the applicant to engage in the practice of physical therapy without restriction.
    - (2) Provided written proof ~~that~~ the applicant's school of physical therapy or physical therapy assistant education is recognized by its ~~own~~ ministry of education or other appropriate education agency.
    - (3) Undergone a credentials evaluation as directed by the board ~~that determines that~~determining the candidate has met uniform criteria for educational requirements as further established by rule.
    - (4) Completed any additional education or clinical experience as required by the board.
  - d. ~~Pass~~Shall pass the board-approved English proficiency examinations if the applicant's native language is not English.
  - e. ~~Pass~~Shall pass the examination approved by the board.
  - f. Shall obtain a criminal background check as referenced in section 43-26.1-05.1 and required under article III of chapter 43-26.2.

3. Notwithstanding the provisions of subsection 2, if the applicant is educated outside of the United States and is a graduate of a professional physical therapy ~~therapist or physical therapist assistant~~ educational program accredited by a national accrediting agency approved by the board, the board may waive the requirements in subdivision c of subsection 2.

**SECTION 5. AMENDMENT.** Section 43-26.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-26.1-05. Application and examination.**

1. An applicant for licensure shall file a complete application as required by the board. The applicant shall include application fees as ~~prescribed~~provided in this chapter and under applicable rules.
2. The board shall provide examinations at times and places ~~it~~the board determines. The board shall determine the passing score.
3. An applicant for licensure as a physical therapist may take the examination after the application process has been completed. The examination ~~shall~~must test entry-level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention, and consultation.
4. An applicant for licensure as a physical therapist assistant may take the examination after the application process has been completed. The examination ~~shall~~must test for requisite knowledge and skills in the technical application of physical therapy services.
5. An applicant for licensure who does not pass the examination on the first attempt may retake the examination ~~one additional time without reapplication for licensure within six months of the first failure. Before the board may approve an applicant for subsequent testing beyond two attempts, an applicant shall reapply for licensure and shall submit evidence satisfactory to the board of having successfully completed additional clinical training or coursework, or both, as the board determines, not to exceed six attempts. There is a limit of two attempts for scores below four hundred.~~
6. If the board determines that an applicant or examinee has engaged, or has attempted to engage, in conduct that subverts or undermines the integrity of the examination process, the board may disqualify the applicant or examinee from taking the examination.

**SECTION 6. AMENDMENT.** Section 43-26.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-26.1-08. License renewal - Changes.**

A licensee shall renew the license annually pursuant to board rules. A licensee who fails to renew the license on or before the expiration date ~~shall~~may not practice as a physical therapist or physical therapist assistant in this state, and may be subject to a late renewal fee. ~~Each~~A licensee is responsible for ~~reporting~~reporting ~~shall~~report to the board a name change and other changes in business and home address~~contact information~~ within thirty days of the date of change.

**SECTION 7.** A new subsection to section 43-26.1-10 of the North Dakota Century Code is created and enacted as follows:

Forty dollars for the compact privilege.

**SECTION 8. AMENDMENT.** Section 43-26.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-26.1-11. Patient care management.**

1. A physical therapist ~~is responsible for managing~~shall manage all aspects of each patient's physical therapy. A physical therapist shall provide:
  - a. Each patient's initial evaluation and documentation.
  - b. Periodic re-evaluation and documentation of each patient.
  - c. The documented discharge of the patient, including the response to therapeutic intervention at the time of discharge.
2. If the diagnostic process reveals findings ~~that are~~ outside the scope of a physical therapist's knowledge, experience, or expertise, a physical therapist shall ~~so~~ inform the patient or client and refer the patient or client to an appropriate practitioner.
3. A physical therapist shall assure the qualifications of ~~all~~a physical therapist ~~assistants~~assistant and physical therapy ~~aides~~aide under the physical therapist's direction and supervision.
4. For each patient on each date of service, a physical therapist shall provide all of the therapeutic intervention that requires the expertise of a physical therapist and shall determine the use of physical therapist assistants ~~or physical therapy aides~~ that provide for the delivery of care that is safe, effective, and efficient.
  - a. A physical therapist assistant shall work under the supervision of a physical therapist. A physical therapist assistant may document care provided without the cosignature of the supervising physical therapist.
  - b. A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the direct supervision of a physical therapist. This supervision may extend to ~~offsite~~general supervision of the physical therapy aide only when the physical therapy aide is accompanying and working directly with a physical therapist assistant with a specific patient or when performing non-patient-related tasks.
5. A physical therapist's ~~or physical therapist assistant's~~ responsibility for patient care management ~~shall include~~includes accurate documentation and billing of the services provided.
6. The physical therapist shall communicate the overall plan of care with the patient or the patient's legally authorized representative.

**SECTION 9.** A new subsection to section 43-26.1-13 of the North Dakota Century Code is created and enacted as follows:

Attempting to engage in conduct that subverts or undermines the integrity of the examination or the examination process, including a violation of security and copyright provisions related to the national licensure examination; utilizing recalled or memorized examination questions from or with any person; communicating or attempting to communicate with other examinees during the examination; or copying or sharing examination questions or portions of questions.

**SECTION 10. AMENDMENT.** Section 43-26.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-26.1-14. Lawful practice.**

1. A physical therapist or physical therapist assistant licensed under this chapter is fully authorized to practice physical therapy ~~as defined herein~~. The board shall require each licensee to provide the board with evidence of competence regarding the various elements of manual therapy the licensee practices so ~~that~~ the board may determine satisfactory competency levels and requirements as provided under section 43-26.1-03.
2. A physical therapist or physical therapist assistant shall adhere to the standards of ethics of the physical therapy profession as established by rule.
3. A physical therapist may purchase, store, and administer topical medications, including aerosol medications as part of the practice of physical therapy ~~as defined herein~~, but ~~shall~~may not dispense or sell any of the medications to patients. A physical therapist shall comply with any regulation adopted by the United States pharmacopoeia specifying protocols for storage of medications.

**SECTION 11.** A new subsection to section 43-26.1-15 of the North Dakota Century Code is created and enacted as follows:

A physical therapist who graduated from a doctor of physical therapy program may use the title "doctor of physical therapy". A physical therapist holding a doctor of physical therapy or other doctoral degree may not use the title "doctor" without clearly informing the public of the physical therapist's licensure as a physical therapist.

**SECTION 12. APPLICATION.** Notwithstanding section 2 of this Act, any member of the North Dakota board of physical therapy serving a term on the board when this Act becomes effective whose term does not expire on June 30, 2019, may serve the remainder of that member's term. For a board position expiring on June 30, 2019, and for the new positions to the board created by section 2 of this Act, the governor shall appoint individuals to fill those positions in accordance with section 2 of this Act, and the terms of those appointees may be staggered. To accomplish the staggering, the initial term of those appointees may be less than five years.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 364

### SENATE BILL NO. 2236

(Senators J. Lee, Anderson)  
(Representative Beadle)

AN ACT to create and enact chapter 43-64 of the North Dakota Century Code, relating to the licensure and regulation of behavior analyst professionals; to amend and reenact sections 43-32-01, 43-32-02, 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, 43-32-14, 43-32-16, 43-32-17, 43-32-19.1, 43-32-20, 43-32-27, 43-32-27.1, 43-32-30, 43-57-01, 43-57-03, and 43-57-06, subsection 2 of section 43-57-07, and section 43-57-11 of the North Dakota Century Code, relating to the regulation of applied behavioral analysts of psychologist examiners and to the board of integrative health care; to provide a penalty; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 43-32-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-32-01. Definitions.**

1. ~~"Applied behavior analyst" means an individual licensed under this chapter as an applied behavior analyst. The term does not include a registered applied behavior analyst.~~
2. "Board" means the North Dakota state board of psychologist examiners.
- 3-2. "Industrial-organizational psychologist" means an individual who is licensed under this chapter to engage in the practice of industrial-organizational psychology.
- 4-3. "Industrial-organizational psychology" means the provision of psychological research services or consultation services to a group or an organization. The term does not include the delivery or supervision of services to individuals who are themselves, rather than the group or organization, the intended beneficiaries of the services, regardless of the source or extent of payment for services rendered.
- 5-4. "Industrial-organizational psychology resident" means an individual who has met the requirement of subdivision b of subsection 2 of section 43-32-20, is involved in supervised employment in industrial-organizational psychology, and has registered with the board.
- 6-5. "Licensee" means an industrial-organizational psychologist, ~~an applied behavior analyst,~~ or a psychologist.
7. "Practice of applied behavior analysis":
  - a. ~~Means the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including~~

~~principles of operant and respondent learning. The term includes applications of those principles, methods, and procedures to:~~

- ~~(1) Design, supervise, evaluate, and modify treatment programs to change the behavior of individuals diagnosed with an autism spectrum disorder;~~
- ~~(2) Design, supervise, evaluate, and modify treatment programs to change the behavior of individuals;~~
- ~~(3) Design, supervise, evaluate, and modify treatment programs to change the behavior of groups; and~~
- ~~(4) Consult with individuals and organizations.~~

~~b. The term does not include diagnosis, counseling, psychological testing, personality assessment, intellectual assessment, neuropsychological assessment, psychotherapy, cognitive therapy, sex therapy, family therapy, coordination of care, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.~~

8-6. "Practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The term includes psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, biofeedback, behavior analysis and therapy, clinical applications of hypnosis, and other therapeutic techniques based on psychological principles; diagnosis and treatment of mental and emotional disorder or disability, compulsive disorders, disorders of habit or conduct as well as of the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. The term includes providing psychological services to individuals, families, groups, organizations, institutions, and the public regardless of whether payment is received for services rendered. The term includes supervising others who are engaged in the practice of psychology.

9-7. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.

10-8. "Psychology resident" means an individual who is registered by the board and is actively engaged in supervised practice.

11. "Registered applied behavior analyst" or "registrant" means an individual who is registered under this chapter as a registered applied behavior analyst and is supervised by a psychologist or applied behavior analyst. The term does not include an applied behavior analyst.

12-9. "School or college" means any university or other institution of higher learning which is accredited by a regional accrediting association, offering a full-time

graduate course of study in industrial-organizational psychology, or psychology, ~~or applied behavior analysis~~, as appropriate.

**SECTION 2. AMENDMENT.** Section 43-32-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-02. State board of psychologist examiners - How appointed - Qualifications.**

The governor shall appoint a state board of psychologist examiners consisting of seven members, all of whom are residents of the state. One board member must be designated a public member who is a resident of this state, is at least twenty-one years of age, and is not affiliated with any group or profession that provides or regulates health care in any form. Of the remaining six board members, at least one member must be engaged primarily in providing service in psychology ~~or applied behavior analysis~~, and at least one member must be engaged primarily in teaching, training, or research in psychology ~~or applied behavior analysis~~. Except the public member, each member must be licensed under this chapter for at least five years.

**SECTION 3. AMENDMENT.** Section 43-32-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-08. Rules.**

The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees ~~and registrants~~. The board shall adopt rules defining what programs of study are substantially psychological in nature; ~~and what educational programs are acceptable for the licensing of psychologists and applied behavior analysts and for registering registered applied behavior analysts; and what educational programs are acceptable for the licensing of industrial-organizational psychologists.~~

**SECTION 4. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-08.1. Continuing education requirements.**

The board shall adopt rules establishing requirements for the continuing education of all licensees, psychology residents, ~~registrants~~, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license ~~or registration~~ issued under this chapter if the licensee ~~or registrant~~ fails to meet applicable continuing education requirements. Sponsors of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 5. AMENDMENT.** Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-08.2. Continuing education requirements - Renewal.**

Absent a showing of good cause, the board may not renew a license ~~or registration~~ issued under this chapter without proof the continuing education requirements under section 43-32-08.1 have been met. An individual whose license ~~or registration~~ is not renewed because of failure to meet the continuing education requirements must be reinstated and the license ~~or registration~~ renewed if, within one year from the date of nonrenewal, the individual demonstrates to the secretary of the



board the continuing education requirements have been satisfied, pays the renewal fee, and pays a late fee to be determined by rule of the board.

**SECTION 6. AMENDMENT.** Section 43-32-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-09. Examination of qualifications of applicants.**

The board shall examine for, deny, approve, revoke, suspend, and renew the licensing and registration of applicants as provided under this chapter.

**SECTION 7. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-12. Application and fee for licensure and registration.**

The board shall adopt rules establishing the amount of the application fee for licensure and registration. A fee is not refundable.

**SECTION 8. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-13. Annual license and registration fee.**

Annually, the board shall mail or transmit by electronic mail a renewal notice and application to each licensee and registrant at the address or electronic mail address on file with the board. Before November fifteenth of each year, every licensee and registrant shall apply for renewal on a renewal application form provided by the board and pay to the secretary of the board an annual fee determined by the board by rule. Upon confirmation by the board the renewal application is complete, the criteria for renewal have been met, and the secretary of the board has received payment of the annual fee, the secretary shall issue the licensee or registrant a certificate of annual renewal, which commences on January first. An individual may not hold out as an industrial-organizational psychologist, an applied behavior analyst, a registered applied behavior analyst, or a psychologist until the annual fee is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail or electronically mail a renewal notice to each licensee and registrant at the address or electronic mail address on file with the board.

**SECTION 9. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-14. Payment of delinquent annual fee - Reinstatement.**

If an individual's license or registration issued under this chapter expires for failure to pay the annual fee, the board shall reinstate that individual and renew the license or registration if, within one year from the date of expiration, the individual pays to the secretary of the board the amount of the annual fees in default and a late fee in the amount established by the board by rule and demonstrates all continuing education requirements have been met or the board has granted an extension of the period in which to meet the continuing education requirements.

**SECTION 10. AMENDMENT.** Section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-16. Board to keep records.**

1. The board shall keep a record of its proceedings and a register of all applicants for licensing ~~or registration~~ which must show:
  - a. The name, date of birth, and residence of each applicant.
  - b. The date of each applicant's application.
  - c. The place of business of each applicant.
  - d. A summary of the educational and other qualifications of each applicant.
  - e. Whether an examination was required of an applicant.
  - f. Whether a license ~~or registration~~ was granted to an applicant.
  - g. The date of the action of the board.
  - h. Any information the board determines necessary or advisable in aid of the requirements of this subsection.
2. Except as otherwise provided by law, the records of the board are public records and evidence of the proceedings of the board, and a transcript of board proceedings, duly certified by the secretary of the board is admissible in evidence with the same effect as if the original were produced.

**SECTION 11. AMENDMENT.** Section 43-32-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-17. License required for practice - Titles.**

1. Except as otherwise provided under this chapter, a person may not engage in the practice of psychology unless that person is licensed as a psychologist or is registered as a psychology resident under this chapter. Except as otherwise provided by this chapter, a person may not engage in the practice of industrial-organizational psychology unless that person is licensed as a psychologist or industrial-organizational psychologist or is registered as a psychology resident or industrial-organizational psychology resident under this chapter. ~~Except as otherwise provided under this chapter, a person may not engage in the practice of applied behavior analysis unless that person is a licensee or is registered and supervised as an applied behavior analyst as provided under this chapter.~~
2. A person may not use the title "psychologist" or similar title unless that person is licensed as a psychologist. A person may not use the titles "industrial psychologist", "organizational psychologist", or "industrial-organizational psychologist" unless that person is licensed as a psychologist or industrial-organizational psychologist. ~~A person may not use the title "licensed applied behavior analyst" or similar title unless that person is an applied behavior analyst. A person may not use the title "registered applied behavioral analyst" or similar title unless that person is registered and supervised as a registered applied behavior analyst.~~
3. A person may not use the title "psychology resident" or similar title unless that person is registered as a psychology resident. A person may not use the titles "industrial psychology resident", "organizational psychology resident", or

"industrial-organizational psychology resident" unless that person is registered as a psychology resident or industrial-organizational psychology resident.

**SECTION 12. AMENDMENT.** Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-19.1. Expedited licensure - Licensure ~~or registering~~ applicants licensed or registered in other jurisdictions.**

1. The board may grant a license ~~or registration~~ to an applicant who is an individual licensed, certified, or registered in another jurisdiction and who files a completed application on a form and in a manner the board prescribed, submits the required fee, and submits documentation:
  - a. Confirming graduation from an accredited program in the degree of licensure ~~or registration~~ for which the individual is applying in this state;
  - b. Confirming completion of a national examination required by the board related to competence in psychology ~~or applied behavior analysis~~;
  - c. Identifying all professional licenses, certifications, or registrations previously obtained by the applicant in any jurisdiction;
  - d. Explaining any professional or personal conduct that reasonably may be interpreted as indicating an inability to adhere to this chapter, including the code of ethical conduct adopted by the board; and
  - e. Providing the board with a release by which the board may obtain from the applicant's current jurisdiction, confirmation of the educational degree the applicant's licensure or registration required, documentation of any disciplinary action related to the applicant's license or registration, and an explanation of all levels in the applicant's profession the current jurisdiction licenses or registers.
2. As a condition to qualify for licensure ~~or registration~~ under subsection 1, the board may require the applicant pass an examination on the ethics, laws, and rules regulating the practice of psychology; or industrial-organizational psychology; ~~or applied behavior analysis~~, as appropriate to the licensure ~~or registration~~ sought by the applicant.
3. Notwithstanding any contrary provision of this chapter, the board may issue a license ~~or registration~~ as authorized under chapter 43-51.
4. The board may grant a provisional license ~~or registration~~ to an expedited licensure applicant while the application is pending. ~~The board may grant a provisional registration to an individual who is applying for registration as an applied behavior analyst if the individual is certified by a professional organization that is identified by the board by rule.~~ The board may deny or place restrictions on a provisional license ~~or registration~~ under this subsection if in another jurisdiction, within the previous five years, the applicant had a disciplinary action against the applicant's license or registration.
5. Except as otherwise provided under this chapter, and in accordance with rules adopted by the board, the board may issue a limited practice certificate to an applicant who is licensed or registered in another jurisdiction to practice psychology; or industrial-organizational psychology; ~~or applied behavior~~

~~analysis.~~ A limited practice certificate issued under this subsection authorizes the practice of psychology; or industrial-organizational psychology; ~~or applied behavior analysis~~ in this state for no more than thirty days in a calendar year.

**SECTION 13. AMENDMENT.** Section 43-32-20 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-20. Licensing - Written and oral examination - Qualifications of applicants.**

The board may issue a license ~~or registration~~ to each applicant who files a completed application upon a form and in a manner the board prescribes, submits the required fee, and meets the requirements of subsection 1; or 2; ~~or 3.~~

1. An applicant for licensure as a psychologist shall demonstrate all of the following:
  - a. The applicant will adhere to the code of ethical conduct adopted by the board by rule.
  - b. The applicant has received, from a school or college, a doctorate degree in a program that is accredited as a doctoral program in psychology by an accrediting body approved by the board by rule.
  - c. The applicant has passed the examinations, written or oral, or both, as the board determines necessary.
  - d. The applicant has completed at least two full years of supervised professional experience, one year of which must be an internship program, and one year of which may be postdoctoral. Both years of experience must comply with the board's rules.
2. An applicant for licensure as an industrial-organizational psychologist shall demonstrate all of the following:
  - a. The applicant will adhere to the code of ethical conduct adopted by the board by rule.
  - b. The applicant has received, from a school or college, a doctorate degree in a program of studies accredited by an accrediting body approved by the board by rule.
  - c. The applicant has passed the examinations, written or oral, or both, as the board determines necessary.
  - d. The applicant has completed the professional experience requirements established by the board. The requirements may not exceed the professional experience requirements for psychologists. If the professional experience requirements include a supervised experience requirement:
    - (1) The board must allow an applicant to submit to the board a personalized plan for supervised experience which may include distance-supervision by a qualified industrial-organizational psychologist.

- (2) The board may adopt rules to establish who is qualified to perform supervision, supervision requirements, and reporting.
- 3- ~~An applicant for licensure as an applied behavior analyst or registration as a registered applied behavior analyst shall:~~
- a. ~~Submit written documentation confirming the applicant will adhere to the code of ethical conduct adopted by the board by rule.~~
  - b. ~~Demonstrate the applicant meets board-approved education requirements adopted by the board by rule.~~
  - c. ~~Demonstrate the applicant passed examinations demonstrating professional competence adopted by the board by rule.~~
  - d. ~~Provide documentation indicating the applicant has established supervision requirements as determined by the board by rule. The board's rule must allow for supervision of board-certified behavioral analysts by professionals with equivalent or greater training.~~

**SECTION 14. AMENDMENT.** Section 43-32-27 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-27. Denial - Revocation or suspension of license ~~or registration~~ - Grounds.**

1. The board, after notice, hearing, and an affirmative vote of at least a majority of board members, may withhold, deny, revoke, or suspend any license ~~or registration~~ issued or applied for under this chapter and may otherwise discipline a licensee, ~~a registrant~~, or an applicant upon proof the applicant, ~~registrant~~, or licensee:
  - a. Has been convicted of an offense determined by the board to have a direct bearing upon an individual's ability to serve the public in the practice of psychology ~~or applied behavior analysis~~, or if the board finds, after the conviction of any offense, that an individual is not sufficiently rehabilitated under section 12.1-33-02.1.
  - b. Is unable to practice psychology ~~or applied behavior analysis~~ with reasonable skill and safety to clients or patients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.
  - c. Has impersonated another individual holding a license ~~or registration~~ issued under this chapter or allowed another person to use the licensee's license ~~or registration~~.
  - d. Has used fraud or deception in applying for a license ~~or registration~~ or in taking an examination under this chapter.
  - e. Has allowed the licensee's ~~or registrant's~~ name or license ~~or registration~~ issued under this chapter to be used in connection with any person who performs psychological ~~or applied behavior analysis~~ services outside of the area of that person's training, experience, or competence.

- f. Is legally adjudicated insane or mentally incompetent. The record of the adjudication is conclusive evidence of that fact.
  - g. Has engaged in any form of unethical conduct as defined in the code of ethical conduct adopted by the board by rule.
  - h. Has become grossly negligent in the practice of psychology or ~~applied behavior analysis~~.
  - i. Has willfully or negligently violated this chapter.
  - j. Has engaged in an act in violation of rules adopted by the board.
  - k. Has had a license or ~~registration~~ revoked or suspended or was disciplined in another jurisdiction.
2. The board shall state in writing the board's reason for denying a license or ~~registration~~.
  3. The board may assess costs incurred by the board related to investigations and disciplinary actions. By rule, the board may set fees or fines, not to exceed five hundred dollars, for minor infractions of this chapter.
  4. An individual whose license or ~~registration~~ has been revoked under this section may not reapply for licensure or ~~registration~~ for at least two years after the date of revocation.
  5. Other than the term "in good standing", by rule, the board shall define terms related to license status, such as "revoked", "suspended", "inactive", and "probationary".

**SECTION 15. AMENDMENT.** Section 43-32-27.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-27.1. Complaints - Investigations.**

1. A person aggrieved by the actions of a licensee, ~~registrant~~, or psychology resident may file a written statement with the board citing the specific allegations of misconduct. The board shall notify the licensee, ~~registrant~~, or psychology resident of the allegation and request a written response. The board may establish procedural exceptions for processing multiple allegations from the same person.
2. The board shall determine if the information in an allegation warrants investigation as a complaint, without requiring the source of the information to be made a matter of public record, if the board concludes that good cause exists for preserving the confidentiality of the source.
3. A licensee, ~~registrant~~, or psychology resident who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or client records if reasonably requested by the board and accompanied by the appropriate release.

4. In order to pursue an investigation, the board may subpoena and examine witnesses and records, including patient and client records, and may copy, photograph, or take samples of the records. The board may require the licensee, ~~registrant~~, or psychology resident to give statements under oath, to submit to a physical or psychological examination, or both, by a physician or other qualified evaluation professional selected by the board, if requiring an examination is in the best interest of the public. The patient and client records released to the board are not public records. The board may adopt rules to assign, define duties, and compensate an investigator to assist the board to process a complaint.
5. Unless a patient or client release is on file allowing the release of information at the public hearing, patient and client records acquired by the board in the board's investigation are confidential and closed to the public. All board meetings at which patient or client testimony or records are taken or reviewed are confidential and closed to the public. If patient or client testimony or records are not taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

**SECTION 16. AMENDMENT.** Section 43-32-30 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-30. Persons exempt from this chapter.**

This chapter does not apply to:

1. A student or intern pursuing a course of study in psychology, or industrial-organizational psychology, ~~or applied behavior analysis~~ at a school or college, if the activities and services are a part of the individual's supervised course of study and are under the supervision of a licensed psychologist who meets the required supervision and continuing education requirements and demonstrates competency in the area of the student's or intern's practice; or industrial-organizational psychologist, ~~or applied behavior analyst~~. The student or intern may not use the title "psychologist"; or "industrial-organizational psychologist", "~~licensed behavior analyst~~", or "~~registered applied behavior analyst~~". The student or intern status and the supervisor must be clearly stated.
2. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology, ~~applied behavior analysis~~, or industrial-organizational psychology unless the lecturer is licensed or registered under this chapter.
3. An individual employed by a public school if that individual's activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only if the individual has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the education standards and practices board.
4. ~~A person~~An individual certified, licensed, or registered in this state in another health care profession, or as a member of the clergy functioning in a ministerial capacity, whose scope of practice is consistent with the accepted standards of that ~~person's~~individual's profession. ~~A person~~An individual

claiming an exemption under this subsection may not represent to be rendering psychological or ~~applied behavior analysis~~ services.

5. ~~A person~~An individual employed by an agency, a nonprofit corporation, or an institution if that ~~person~~individual is currently exempt from licensure. A ~~person~~individual exempt under this subsection continues to be exempt if the ~~person~~individual continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.
6. ~~An individual providing applied behavior analysis services to an individual in a public school setting.~~
7. ~~An individual who is implementing applied behavior analysis services to an immediate family member or as a paid or volunteer caregiver implementing procedures established by the family or by the individual served in any setting, if the individual or caregiver does not represent as a registrant or an applied behavior analyst.~~

**SECTION 17. AMENDMENT.** Section 43-57-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Board" means the state board of integrative health care.
2. "Licensee" means an individual licensed by the board under this chapter and under chapter 43-58, 43-59, or 43-61, or 43-64.

**SECTION 18. AMENDMENT.** Section 43-57-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-03. Powers and duties of board.**

1. The board shall adopt rules:
  - a. To administer and enforce this chapter and chapters 43-58, 43-59, and 43-61, and 43-64;
  - b. That specify the scope of practice, which must be consistent with the required education for each profession regulated by the board;
  - c. To establish any exemptions from licensure;
  - d. That endorse equivalent licensure examinations of another state or foreign country and which may include licensure by reciprocity;
  - ~~d-e.~~ That establish educational standards for each profession regulated by the board as appropriate; and
  - ~~e-f.~~ That set fees for licensure, which may include:
    - (1) Application fee;



- (2) License fee;
  - (3) Renewal fee;
  - (4) Late fee;
  - (5) Administrative fees; and
  - (6) Continuing education fees.
2. The board shall produce an annual list of the names and level of licensure of all individuals licensed by the board and make the list available upon request.
  3. The board may employ staff and provide for staff compensation.
  4. The board shall receive all moneys collected under this chapter, ~~chapter and chapters 43-58, 43-59, and 43-61, and 43-64~~ and shall deposit and disburse all fees and moneys collected in accordance with section 54-44-12.
  5. The board may establish continuing education requirements for license renewal.
  6. The board may adopt a code of ethics for each profession regulated by the board.
  7. The board may adopt rules allowing students to practice under licensed supervision.

**SECTION 19. AMENDMENT.** Section 43-57-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-06. Issuance of license - Expedited.**

1. If the board determines that an applicant possesses the qualifications required under this chapter and under chapter 43-58, 43-59, or 43-61, or 43-64, the board shall issue a license to the applicant.
2. The board shall establish an expedited procedure for licensure of an applicant who is certified by a professional organization identified by the board by rule or who holds a valid license or certificate of registration in another jurisdiction. The board may grant a provisional license to an expedited licensure applicant while the expedited license application is pending.

**SECTION 20. AMENDMENT.** Subsection 2 of section 43-57-07 of the North Dakota Century Code is amended and reenacted as follows:

2. A license issued under chapter 43-58 or 43-59 expires on December thirty-first of every odd-numbered year. A license issued under chapter 43-61 or 43-64 expires on December thirty-first of every even-numbered year.

**SECTION 21. AMENDMENT.** Section 43-57-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-11. Enforcement - Penalty.**

A person that violates this chapter or chapter 43-58, 43-59, or 43-61, or 43-64 is guilty of a class B misdemeanor. In addition to the criminal penalties provided under this section, the civil remedy of injunction is available to restrain and enjoin any violation of this chapter or chapter 43-58, 43-59, or 43-61, or 43-64 without proof of actual damages sustained by any person.

**SECTION 22.** Chapter 43-64 of the North Dakota Century Code is created and enacted as follows:

**43-64-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Board" means the state board of integrative health care created under chapter 43-57.
2. "Licensed assistant behavior analyst" means an individual who is licensed under this chapter as a licensed assistant behavior analyst and is supervised by a licensed behavior analyst.
3. "Licensed behavior analyst" means an individual licensed under this chapter as a licensed behavior analyst.
4. "Practice of applied behavior analysis" means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The term includes the empirical identification of functional relations between behavior and environmental factors. The term does not include the diagnosis of disorders, psychological testing, psychotherapy, cognitive therapy, psychoanalysis, and counseling.

**43-64-02. License required - Title restrictions.**

1. Effective January 1, 2020, an individual may not practice applied behavior analysis without a current license issued by the board under this chapter.
2. A licensed behavior analyst may use the title "licensed behavior analyst." A licensed assistant behavior analyst may use the title "licensed assistant behavior analyst." Effective January 1, 2020, an individual who uses these terms as identification without having received a license as required under this chapter is engaging in the practice of applied behavior analysis without a license.

**43-64-03. Qualifications for licensure.**

To obtain a license to practice applied behavior analysis in this state, an applicant shall submit an application to the board. The application must be upon the form adopted by the board and must be made in the manner prescribed by the board.

**43-64-04. Application for licensure.**

1. An applicant for licensure shall file an application on forms provided by the board showing to the board's satisfaction the applicant is of good moral character and has satisfied the requirements of this chapter and chapter 43-57, including:
  - a. Successful completion of education, examination, and experience requirements established by the board, such as certification from the

behavior analyst certification board or a certifying entity accredited by the national commission for certifying entities or the American national standards institute;

- b. Physical, mental, and professional capability for the practice of applied behavior analysis in a manner acceptable to the board; and
  - c. A history free of any finding by the board, any other state licensure board, or any court of competent jurisdiction of the commission of any act that would constitute grounds for disciplinary action under this chapter and chapter 43-57. The board may modify this restriction for cause.
2. The application must be accompanied by the board-established license fees and application fees and by the documents, affidavits, and certificates necessary to establish the applicant possesses the necessary qualifications.
  3. The board shall establish standards for licensed behavior analysts supervising licensed assistant behavior analysts.

**43-64-05. Initial applications - Grandfather provision.**

Notwithstanding the education, experience, and examination requirements for licensure under this chapter, if on December 31, 2019, an applicant held a valid license or registration issued by the state board of psychologist examiners under chapter 43-32, the applicant is deemed to have met the education, experience, and examination requirements for licensure.

**SECTION 23. EFFECTIVE DATE.** Sections 1 through 16 of this Act become effective on January 1, 2020.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 365

### HOUSE BILL NO. 1377

(Representatives Magrum, Ertelt, Headland, Jones, Kiefert, Pollert)  
(Senators Dwyer, Erbele, Schaible, Wanzek)

AN ACT to amend and reenact sections 43-35-03, 43-35-17, and 43-35-23 of the North Dakota Century Code, relating to state board of water well contractors and continuing education requirements for water well pump and pitless unit installers; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 43-35-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-03. State board of water well contractors - Members' appointment - Qualification.**

The state board of water well contractors consists of the state engineer and the state health officer, or their duly authorized designees, two water well contractors appointed by the governor, one geothermal system driller or one monitoring well contractor appointed by the governor, one water well pump and pitless unit installer appointed by the governor, and one member appointed at large by the governor.

**(Contingent effective date - See note) State board of water well contractors - Members' appointment - Qualification.** The state board of water well contractors consists of the state engineer and the director of the department of environmental quality, or their duly authorized designees, two water well contractors appointed by the governor, one geothermal system driller or one monitoring well contractor appointed by the governor, one water well pump and pitless unit installer appointed by the governor, and one member appointed at large by the governor.

**SECTION 2. AMENDMENT.** Section 43-35-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-17. Renewal of certificate - Continuing education.**

1. A certificate issued under this chapter is valid for up to one year and expires on the thirty-first day of December in the year of issuance. ~~The~~ To renew a certificate may be renewed by, a certificate holder shall submit to the board upon a completed renewal application. Every two years the application must include reporting information that the applicant completed six hours of continuing education during the two-year reporting cycle which meets continuing education standards adopted by the board. ~~The~~ completed renewal application must be made:
  - a. Submitted to the board before April first in the year following the certificate's expiration, ~~must be accompanied;~~
  - b. Accompanied by a fee in an amount set by the board not to exceed two hundred dollars, ~~and must be accompanied;~~

- c. Accompanied by any continuing education reporting information required under this section; and
- d. Accompanied by a bond as provided in section 43-35-14.
- 2. Except as provided under subsection 3, every two years the renewal application must include reporting information verifying the applicant completed six hours of board-approved continuing education during the two-year reporting cycle.
- 3. A renewal application for certification as a water well pump and pitless unit installer must include reporting information verifying the applicant completed two hours of board-approved continuing education during the two-year reporting cycle.
- 4. The board shall adopt rules establishing continuing education standards.

**SECTION 3. AMENDMENT.** Section 43-35-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-23. Continuing education - Preapproval requirements.**

Each

- 1. As provided under section 43-35-17, each certificate holder shall earn at least ~~six hours~~ of board-approved continuing education during every two-year reporting cycle to qualify for certificate renewal, except a new certificate holder is not required to earn continuing education until the second renewal year following initial certification.
- 2. Continuing education coursework may be provided by the national ground water association, the North Dakota well drillers association, incorporated, a board-sponsored workshop, the state department of health, the state water commission, or by any board-approved course provider.
- 3. A continuing education course must be preapproved by the board unless otherwise provided under this section. A continuing education course provider or a certificate holder shall request preapproval of continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells.
- 4. A certificate holder may request approval of education that was not preapproved by submitting to the board verification of attendance, a course outline, and an explanation of why preapproval was not obtained. The board shall determine on a case-by-case basis whether to approve education that was not preapproved.

**(Contingent effective date - See note) Continuing education - Preapproval requirements.** Each

- 1. As provided under section 43-35-17, each certificate holder shall earn at least ~~six hours~~ of board-approved continuing education during every two-year reporting cycle to qualify for certificate renewal, except a new certificate holder is not required to earn continuing education until the second renewal year following initial certification.

2. Continuing education coursework may be provided by the national ground water association, the North Dakota well drillers association, incorporated, a board-sponsored workshop, the department of environmental quality, the state water commission, or by any board-approved course provider.
3. A continuing education course must be disapproved by the board unless otherwise provided under this section. A continuing education course provider or a certificate holder shall request disapproval of continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells.
4. A certificate holder may request approval of education that was not preapproved by submitting to the board verification of attendance, a course outline, and an explanation of why preapproval was not obtained. The board shall determine on a case-by-case basis whether to approve education that was not preapproved.

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

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 366

### SENATE BILL NO. 2361

(Senators Anderson, Mathern)  
(Representative J. Nelson)

AN ACT to create and enact subsection 8 of section 43-41-11 and three new sections to chapter 43-41 of the North Dakota Century Code, relating to the licensing of social workers; to amend and reenact subsections 9 and 10 of section 25-01-01, section 43-41-01, subsection 2 of section 43-41-02, subsection 1 of section 43-41-03, and sections 43-41-04, 43-41-05, 43-41-08, 43-41-10, and 43-41-12, of the North Dakota Century Code, relating to the licensing of social workers; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsections 9 and 10 of section 25-01-01 of the North Dakota Century Code are amended and reenacted as follows:

9. "Tier 2 mental health professional" means a tier 2a or a tier 2b mental health professional.
  - a. A tier 2a mental health professional is an independent clinician who is a licensed ~~independent~~ clinical social worker licensed under chapter 43-41, a licensed professional clinical counselor licensed under chapter 43-47, or a licensed marriage and family therapist licensed under chapter 43-53.
  - b. A tier 2b mental health professional is an addiction counselor licensed under chapter 43-45 or a registered nurse licensed under chapter 43-12.
10. "Tier 3 mental health professional" means a licensed associate professional counselor licensed under chapter 43-47, a licensed ~~certified~~master social worker ~~or licensed baccalaureate social worker~~ licensed under chapter 43-41, a licensed professional counselor licensed under chapter 43-47, an associate marriage and family therapist licensed under chapter 43-53, an occupational therapist licensed under chapter 43-40, a licensed practical nurse licensed under chapter 43-12, a behavior analyst licensed or registered under chapter 43-32, a vocational rehabilitation counselor practicing under chapter 50-06.1, a school psychologist, or a human relations counselor.

**SECTION 2. AMENDMENT.** Section 43-41-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-41-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of social work examiners.
2. ~~"College or university" means an institution of higher education whose social work program has been accredited by an accrediting body approved by the board.~~

3. ~~"Licensed certified social worker" means an individual who has a doctorate or master's degree in social work from a college or university and who has fulfilled the requirements for licensure.~~
4. ~~"Licensed independent clinical social worker" means an individual who has a doctorate or master's degree in social work from a college or university and who has fulfilled the requirements for licensure or has been registered by the board for third-party reimbursement before August 1, 1997.~~
5. ~~"Licensed social worker" means an individual who has a baccalaureate degree in social work from a college or university and who has fulfilled the requirements for licensure.~~

"Client" means the individual, couple, family, group, organization, or community that seeks or receives social work services from an individual licensed social worker or an organization, regardless of whether the licensed social worker or organization bills or accepts or requests the payment of fees for the services.

3. "Clinical supervision for licensure" means an interactional professional relationship between a clinical supervisor which meets the standards adopted by the board and a social worker and which provides evaluation and direction over the supervisee's practice of clinical social work in preparation for the social worker's licensure as a licensed clinical social worker, in accordance with the requirements adopted by the board, and promotes development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner.
4. "Consultation" means an advisory professional relationship between a social worker and an individual with particular expertise, with the social worker legally and ethically maintaining responsibility for all judgments and decisions regarding service to the client.
5. "Counseling" means a method used by a social worker to assist an individual, couple, family, or group in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.
6. "Electronic social work services" means the use of a computer, including the internet, social media, online chat, text, and electronic mail, or other electronic means, such as a wireless communications device, landline telephone, or video technology, to provide information to the public, deliver social work services to a client, communicate with a client, manage confidential information and case records, store and access information about clients, and arrange payment for professional services.
7. "Licensed baccalaureate social worker" means an individual licensed under this chapter to practice baccalaureate social work.
8. "Licensed clinical social worker" means an individual licensed under this chapter to practice clinical social work.
9. "Licensed master social worker" means an individual licensed under this chapter to practice masters social work.



6-10. "Private practice of social work" means the independent practice of social work by a qualified individual licensee who is practicing within that licensee's scope of practice, and who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or an agency are not considered to be the private practice of social work.

7-11. "Social work practice" consists of the professional application of social work values, principles, and techniques in helping people obtain tangible services; counseling; psychotherapy with individuals, families, and groups; helping communities or groups to improve social and health services; providing social casework; directly supervising programs providing social work services; social work education; social work research; or any combination of these. The practice of social work requires knowledge of human development and behavior, of social, economic, and cultural institutions, and the interaction of all these factors means the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. The scope of practice for licensees of the board consist of the following:

- a. The practice of baccalaureate social work, which includes the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is generalist practice that includes assessment, planning, implementation, intervention, evaluation, research, social work case management, information and referral, counseling, supervision, consultation, education, advocacy, community organization, and the development, implementation, and administration of policies, programs, and activities.
- b. The practice of masters social work, which includes, in addition to the practice of baccalaureate social work, the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation, intervention, evaluation, social work case management information and referral, counseling, supervision, consultation, education, research, advocacy, community organization, and the development, implementation, and administration of policies, programs, and activities. Under the supervision of a licensed clinical social worker, the practice of masters social work may include the practices reserved to licensed clinical social workers.
- c. The practice of clinical social work, which includes, in addition to the practice of baccalaureate social work and the practice of masters social work, the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, treatment planning, implementation and evaluation, social work case management information and referral, counseling, supervision, consultation, education, research, advocacy, community organization, the development, implementation, intervention, and administration of policies, programs, and activities, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. Treatment methods include the provision of individual, marital, couple, family, and group counseling and

psychotherapy. The practice of clinical social work may include the provision of clinical supervision.

12. "Psychotherapy" means the use of treatment methods utilizing a specialized, formal interaction between a licensed clinical social worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained, and sustained to understand unconscious processes; intrapersonal, interpersonal, and psychosocial dynamics; and the assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions, or addictions.
13. "Social work case management" means a method to plan, provide, evaluate, and monitor services by a licensed social worker from a variety of resources on behalf of and in collaboration with a client.

**SECTION 3. AMENDMENT.** Subsection 2 of section 43-41-02 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Nothing in this~~This chapter may not be construed to prevent students who are enrolled in programs of study leading to social work degrees from interning with a licensed baccalaureate social worker, a licensed certifiedmaster social worker, or a licensed ~~independent~~ clinical social worker.

**SECTION 4. AMENDMENT.** Subsection 1 of section 43-41-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Only those persons licensed to practice under this chapter may represent themselves as a licensed baccalaureate social worker, licensed certifiedmaster social worker, or licensed ~~independent~~ clinical social worker.

**SECTION 5. AMENDMENT.** Section 43-41-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-41-04. Licenses - Rules.**

1. Except as otherwise provided in this chapter, ~~nea~~ person may not engage in social work practice in this state unless that person is a licensed baccalaureate social worker, a licensed certifiedmaster social worker, or a licensed ~~independent~~ clinical social worker.
2. ~~The board shall issue a license as a licensed social worker to an applicant who~~To obtain a license to engage in the practice of social work, an applicant shall submit an application to the board in the form prescribed by the board and provide evidence satisfactory to the board the applicant:
  - a. ~~Has a baccalaureate degree in social work from a college or university~~attained the age of majority.
  - b. Has passed ~~an~~the examination approved by the board for this purposethe license sought.
  - c. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.
3. ~~The board shall issue a license as a licensed certified social worker to an applicant who:~~

- 
- a. ~~Has a doctorate or master's degree in social work from a college or university.~~
  - b. ~~Has passed an examination approved by the board for this purpose.~~
  - c. ~~Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.~~
4. ~~To obtain a license to practice clinical social work, an applicant for licensure by examination shall submit to the board a written application in the form prescribed by the board and provide satisfactory evidence the applicant:~~
- a. ~~Has a doctorate or master's degree in social work from an approved social work program.~~
  - b. ~~Passed an examination approved by the board for this purpose.~~
  - c. ~~Within~~
  - d. Is of good moral character. As an element of good moral character, the board shall consider the applicant's adherence to values, principles, and ethical standards consistent with professional social work practice, and shall also consider information obtained through reports made under section 43-41-04.2 in licensure decisions to the extent permissible by all applicable laws.
  - e. Has paid all applicable fees specified by the board relative to the licensure process.
3. An applicant for licensure for the practice of:
- a. Baccalaureate social work must demonstrate having been awarded a baccalaureate degree in social work from a social work program approved by the board.
  - b. Masters social work must demonstrate having been awarded a doctorate or master's degree in social work from a social work program approved by the board.
  - c. Clinical social work must demonstrate:
    - (1) Having been awarded a doctorate or master's degree in social work from a social work program approved by the board.
    - (2) The successful completion, within a four-year period successfully completed, of three thousand hours of supervised post-master's clinical social work experience. The initial one thousand five hundred of the required hours must have been under the supervision of a licensed clinical social worker. Additional hours of supervision may be under other qualified mental health professionals approved by the board if barriers due to the geographical location, disability, or other factors determined by the board to create a hardship exist for the applicant. The qualified professional must be registered or otherwise qualified as a clinical supervisor by the board that licenses the other professional. However, if an applicant began supervised post-master's

clinical social work experience before August 1, 2009, a ~~master's~~licensed master social worker who has two years of experience, a licensed psychologist with a doctorate degree, or a licensed psychiatrist may have supervised the required hours. The applicant may demonstrate to the board's satisfaction that experience in the practice of clinical social work meets or exceeds the minimum supervisory requirements of the board.

- d. ~~Agrees to adhere to the code of social work ethics adopted by the board.~~
- e. ~~Is of good moral character. In determining the character of an applicant in a licensure decision, the board shall consider information obtained through reports made under section 43-41-04.2.~~
- f. ~~Paid all applicable fees specified by the board regarding the licensure process~~

4. The board may adopt rules pertaining to the supervision required under this section.

**SECTION 6. AMENDMENT.** Section 43-41-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-41-05. Private practice of social work.**

A person may not engage in the private practice of social work unless that person has been licensed by the board as a licensed ~~independent~~ clinical social worker.

**SECTION 7. AMENDMENT.** Section 43-41-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-41-08. Board of social work examiners - Qualifications - Appointment - Term of office - Compensation.**

1. The governor shall appoint the North Dakota board of social work examiners, which must consist of ~~six~~seven members, two of whom must be, at the time of initial appointment, licensed ~~baccalaureate~~ social workers; one of whom must be, at the time of initial appointment, a licensed ~~certified~~master social worker; ~~one~~two of whom must be, at the time of initial appointment, a licensed ~~independent~~ clinical social worker; and two of whom must be laypersons. Board members must demonstrate no conflict of interest.
2. The term of office of each board member must be for three years with ~~two~~no more than three members appointed annually. ~~No~~A member may not serve more than two consecutive terms.
3. The governor may remove any board member for good cause after giving that member a written statement of the reasons for removal and after that member has had an opportunity for a hearing.
4. ~~Each board member shall serve without compensation but shall~~of the board is entitled to receive as compensation a sum not to exceed the daily compensation of members of the legislative assembly per day for each day during which the member is engaged in performance of the official duties of the board, and is entitled to be reimbursed for all reasonable and necessary

expenses incurred in connection with the discharge of the official duties as provided in section 54-06-09 and per diem as must be fixed by the board.

5. ~~Board~~Annually, board members shall ~~annually~~ elect by a majority vote of the board a chairperson who shall preside at meetings of the board and a vice chairperson who shall preside at meetings of the board in the chairperson's absence. A majority of the members of the board constitutes a quorum.

**SECTION 8. AMENDMENT.** Section 43-41-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-41-10. Grounds for disciplinary proceedings.**

1. The board may deny, refuse to renew, suspend, revoke, ~~reprimand, restrict, or limit the license of,~~ or place on probationary status any license issued under this chapter on proof at a hearing that the applicant or licensed person:
  1. a. Has been convicted of an offense determined by the board to have a direct bearing upon that individual's ability to practice social work or is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
  2. b. Is addicted to the habitual use of alcoholic beverages, narcotics, or stimulants ~~to such an extent as to incapacitate that individual from the~~or other addictive substances that impair the social worker's ability to practice of social work.
  3. c. Has been grossly negligent in the practice of social work.
  4. d. Has violated one or more of the rules and regulations of the board.
  5. e. Has violated the code of social work ethics adopted by the board.
  - f. Has failed to make a report to the board as required under section 12 of this Act.
- 6-2. In order to pursue the investigation, the board may subpoena and examine witnesses and records, including client records, and copy, photograph, or take samples. The board may require a licensed social worker to give statements under oath ~~and, The board may require a licensed social worker to submit to a physical, chemical, or mental examination, or both, by a physician or physicians and/or other qualified evaluation professionals selected by the board if it appears to be in the best interests of the public that an evaluation examination be secured. The board may require a licensee to enroll in a treatment or monitoring program approved by the board if the board determines in good faith to do so would be beneficial to the licensee or protect the public. Failure to satisfactorily undergo an examination or enroll in a treatment and monitoring program must be reported to the board by the treating professional. Treating professionals are immune from any liability for reporting made in good faith. A licensee is deemed to consent to the treating professional of the approved evaluation, or the approved treatment and monitoring program, reporting to the board on the results of the examination or the progress of the treatment or monitoring program, at such intervals the board deems necessary. The approved examination, or treatment or monitoring program, may release examination information, or treatment or monitoring information, to the board so the board may evaluate the results of~~

the examination or the licensee's progress in and the effectiveness of the treatment or monitoring program. A written request from the board constitutes authorization to release information. Absent a client release on file allowing the release of information, all client records released to the board are confidential and are not public records.

- 7-3. Unless there is a client release on file allowing the release of information at the public hearing, client and juvenile records introduced or client and juvenile testimony of a personal nature taken at a public hearing is confidential and closed to the public. The portions of board meetings at which client and juvenile testimony or records are taken or reviewed are confidential and closed to the public. If no client or juvenile testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.
4. Until the board proceeds with disciplinary action, the complaint, the response, and any record received by the board during an investigation of a complaint under this section are exempt records, as defined in section 44-04-17.1.

**SECTION 9.** Subsection 8 of section 43-41-11 of the North Dakota Century Code is created and enacted as follows:

8. The board shall recover costs of the board resulting from a hearing or disciplinary process:
- a. If an order is issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct a licensee found as a result of the proceeding to have violated any laws or rules to pay to the board a sum not to exceed the costs of the investigation and fees of the attorneys representing the board in the matter. The costs to be assessed must be fixed by the administrative law judge and may not be increased by the board.
- b. If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for payment in the district court of Burleigh County. This right of enforcement is in addition to any other rights the board may have as to any person directed to pay costs. In any action for recovery of costs, proof of the board's decision is conclusive proof of the validity of the order of payment and the terms for payment.

**SECTION 10. AMENDMENT.** Section 43-41-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-41-12. Renewal of licenses.**

1. All licenses are effective when granted by the board.
2. All licenses of licensed ~~baccalaureate~~ social workers, licensed ~~certified~~ master social workers, and licensed ~~independent~~ clinical social workers expire on December thirty-first of every odd-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of the continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial under section 43-41-10 do not exist.

4. If the application for renewal is not received on or before the expiration date, the license expires and the person may not practice social work until a new application is made and a license is granted by the board.
5. At the time of renewal the board ~~shall~~ may require each applicant to present satisfactory evidence ~~that~~ the applicant has completed the continuing education requirements specified by the board.
6. If a license has not been renewed as a result of nonpayment of the renewal fee or the failure of the licensee to present satisfactory evidence of completion of the continuing education requirements, the licensee must reapply for licensure.
7. The board may extend the renewal deadline for an applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

**SECTION 11.** A new section to chapter 43-41 of the North Dakota Century Code is created and enacted as follows:

**Electronic social work services.**

1. The practice of social work in this state through electronic social work services or other means, regardless of the location of the practitioner, constitutes the practice of social work and is subject to this chapter.
2. The practice of social work by a practitioner in this jurisdiction through electronic social work services or other means, regardless of the location of the client, constitutes the practice of social work and is subject to this chapter.
3. A social worker providing electronic social work services shall take all necessary measures to ensure compliance with relevant practice standards as established by the board.

**SECTION 12.** A new section to chapter 43-41 of the North Dakota Century Code is created and enacted as follows:

**Permission to report - Immunity.**

An individual who has knowledge of conduct by an applicant or a licensee which may constitute grounds for disciplinary action under this chapter or the rules of the board or of any unlicensed practice under this chapter may report the violation to the board. An individual is immune from civil liability or criminal prosecution for submitting in good faith a report under this chapter or for otherwise reporting, providing information, or testifying about violations or alleged violations of this chapter.

**SECTION 13.** A new section to chapter 43-41 of the North Dakota Century Code is created and enacted as follows:

**Duty to report - Immunity.**

A licensed social worker who has substantial evidence a licensee has an active addictive disease for which the licensee is not receiving treatment under a program approved by the board under an agreement entered under this section, is diverting a controlled substance, or is mentally or physically incompetent to carry out the duties of the license, shall report the evidence to the board. An individual who reports under this section in good faith and without malice is immune from any civil or criminal

liability arising from the report. Failure to provide a report within a reasonable time may be considered grounds for disciplinary action against the licensee.

**SECTION 14. EFFECTIVE DATE.** This Act is effective on February 1, 2020.

Approved March 28, 2019

Filed March 29, 2019



## CHAPTER 367

### SENATE BILL NO. 2339

(Senator Anderson)  
(Representative Westlind)

AN ACT to amend and reenact section 43-45-05.1 of the North Dakota Century Code, relating to qualification for addiction counseling licensure for an applicant licensed in another jurisdiction.

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

**SECTION 1. AMENDMENT.** Section 43-45-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-05.1. Initial licenses - Licensure of applicant licensed in another jurisdiction.**

1. The board shall issue an initial license as an addiction counselor, licensed clinical addiction counselor, or masters addiction counselor to an applicant who has met all of the following requirements:
  - a. Successfully completed board-approved coursework at an accredited college or university.
  - b. Successfully completed one or more oral or written examinations approved by the board for this purpose.
  - c. Successfully completed a clinical training program approved by the board or accumulated experience as established by the board by rule.
  - d. Satisfied to the board that the applicant agrees to adhere to the code of professional conduct adopted by the board.
2. For the clinical training program or accumulated experience required of an intern seeking initial licensure, at least fifty percent of the required supervision must be provided by a supervising licensed addiction counselor, and the additional supervision may be with other professionals who are designated by the supervising addiction counselor, approved by the board, and competent in the area of practice being supervised. The other professional must be registered as a clinical supervisor by the board that licenses the other professional.
3. The board may ~~grant reciprocity, on such terms and conditions as it may determine necessary, issue a license~~ to an applicant for licensure who is in good standing as a licensed, approved, or certified addiction counselor, licensed clinical addiction counselor, or masters addiction counselor under the laws of another jurisdiction ~~that imposes~~:
  - a. Upon satisfactory proof to the board the laws of the other jurisdiction impose at least substantially the same requirements ~~that are~~ imposed under this chapter; or

- b. Upon a determination by the board the applicant possesses qualifications or experiences in the practice of addiction counseling which are substantially similar to the minimum requirements for licensure under this chapter.
4. If the board denies a licensure application, the board shall notify the applicant in writing of the reasons for denial and of the applicant's right to a hearing before the board, under chapter 28-32, if a hearing is requested within thirty days.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 368

### SENATE BILL NO. 2170

(Senators Oban, Hogan, K. Roers)  
(Representatives Lefor, Rohr, M. Ruby)

AN ACT to amend and reenact section 43-48-03 of the North Dakota Century Code, relating to clinical laboratory personnel exemptions.

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

**SECTION 1. AMENDMENT.** Section 43-48-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-48-03. Exemptions.**

The provisions of this chapter do not apply to the following:

1. Physicians duly and currently licensed to practice medicine.
2. Nurses duly and currently licensed to practice nursing and practicing within the scope of the nursing license.
3. Persons performing clinical testing for teaching or research, provided that the results of any examination performed in such laboratories are not used in health maintenance, diagnosis, or treatment of disease.
4. Persons employed by the United States government, or any bureau, division, or agency thereof, and working in a licensed laboratory.
5. Any person in the pursuit of a supervised course of study leading to a degree at an accredited or educational program approved by the board.
6. Phlebotomy personnel performing phlebotomy procedures.
7. Persons performing testing for their own personal use and persons performing screening tests for mass screening under appropriate supervision.
8. Agents of the state or federal government performing hematological tests for anemia upon participants of the special supplemental food program for women, infants, and children.
9. An individual performing exempt tests identified by rules adopted by the board. The individual must be supervised by an individual who is licensed by the board and who performs tests and uses, a physician licensed by the board of medicine, an advanced practice registered nurse licensed by the board of nursing, or other categories of individuals approved by the board by rule. The supervisor and individual shall adhere to the methods identified by rules adopted by the board.
10. Perfusionists performing clinical laboratory tests for hematology, coagulation, and chemistry during the course of a patient's perfusion procedures.

11. Personnel of the division of laboratory services of the state department of health participating in the centers for disease control and prevention's chemical terrorism toxic metals determination program.
12. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.
13. Personnel performing whole blood glucose waived tests as categorized by the food and drug administration based on the criteria established by the Clinical Laboratory Improvement Act of 1988 [42 U.S.C. 263a et seq.].

**(Contingent effective date - [See note](#)) Exemptions.** The provisions of this chapter do not apply to the following:

1. Physicians duly and currently licensed to practice medicine.
2. Nurses duly and currently licensed to practice nursing and practicing within the scope of the nursing license.
3. Persons performing clinical testing for teaching or research, provided that the results of any examination performed in such laboratories are not used in health maintenance, diagnosis, or treatment of disease.
4. Persons employed by the United States government, or any bureau, division, or agency thereof, and working in a licensed laboratory.
5. Any person in the pursuit of a supervised course of study leading to a degree at an accredited or educational program approved by the board.
6. Phlebotomy personnel performing phlebotomy procedures.
7. Persons performing testing for their own personal use and persons performing screening tests for mass screening under appropriate supervision.
8. Agents of the state or federal government performing hematological tests for anemia upon participants of the special supplemental food program for women, infants, and children.
9. An individual performing exempt tests identified by rules adopted by the board. The individual must be supervised by an individual who is licensed by the board and who performs tests and uses, a physician licensed by the board of medicine, an advanced practice registered nurse licensed by the board of nursing, or other categories of individuals approved by the board by rule. The supervisor and individual shall adhere to the methods identified by rules adopted by the board.
10. Perfusionists performing clinical laboratory tests for hematology, coagulation, and chemistry during the course of a patient's perfusion procedures.
11. Personnel of the division of laboratory services of the state department of health or department of environmental quality who are participating in the centers for disease control and prevention's chemical terrorism toxic metals determination program.
12. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.

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13. Personnel performing whole blood glucose waived tests as categorized by the food and drug administration based on the criteria established by the Clinical Laboratory Improvement Act of 1988 [42 U.S.C. 263a et seq.].

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 369

### SENATE BILL NO. 2306

(Senators Meyer, Anderson, Burckhard, Hogue)  
(Representatives Nathe, M. Ruby)

AN ACT to create and enact a new section to chapter 15.1-13, a new section to chapter 15.1-18, and a new section to chapter 43-51 of the North Dakota Century Code, relating to occupational licensure of military members and military spouses; to amend and reenact sections 15.1-13-13, 15.1-13-17, 43-51-01, and 43-51-11.1 of the North Dakota Century Code, relating to occupational licensure of military members and spouses; and to provide for a report.

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

**SECTION 1. AMENDMENT.** Section 15.1-13-13 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-13-13. Provisional teaching license - Period of effectiveness - Renewal.**

1. The board may issue a provisional teaching license to an applicant, pending completion of the background check required by section 15.1-13-14 or pending the receipt of official transcripts or other original, signed, or certified documents. The Except as otherwise provided under section 43-51-11.1, the provisional license is valid for a period of forty days and may be renewed with the approval of the board.
2. The board ~~may~~ shall adopt rules governing the issuance of a provisional teaching license. An Except as provided under section 43-51-11.1, 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.

**SECTION 2. AMENDMENT.** Section 15.1-13-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **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 grant a teaching license to an applicant who is a military spouse who meets the requirements of section 43-51-11.1.

4. 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.

**SECTION 3.** A new section to chapter 15.1-13 of the North Dakota Century Code is created and enacted as follows:

**Members of the military - Military spouses.**

1. Notwithstanding contrary provisions of this chapter regarding licensure and licensure renewal, sections 43-51-11 and 43-51-11.1, regarding licensure renewal of a military member and licensure of a military spouse, apply to a license issued or renewed under this chapter.
2. Rules adopted by the board under this chapter must comply with sections 43-51-11 and 43-51-11.1.

**SECTION 4.** A new section to chapter 15.1-18 of the North Dakota Century Code is created and enacted as follows:

**Military spouses.**

Notwithstanding contrary provisions of this chapter regarding licensure qualifications, section 43-51-11.1, regarding licensure of a military spouse, applies to an applicant's qualifications for licensure.

**SECTION 5. AMENDMENT.** Section 43-51-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-51-01. 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 and the education standards and practices board.
  - a. The term does not include the:
    - (1) State board of accountancy;
    - (2) State electrical board;
    - (3) North Dakota real estate appraiser qualifications and ethics board;
    - (4) State real estate commission;
    - (5) Secretary of state with respect to contractor licensing;
    - (6) North Dakota board of medicine; and
    - (7) State board of dental examiners.

- b. ~~"Board"~~ The term includes any other 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~~ comparable to the requirements imposed in this state to obtain and maintain a license to practice the same profession or occupation.
  5. "Military spouse" means a foreign practitioner who is the spouse of a member of the armed forces of the United States or a reserve component of the armed forces of the United States stationed in this state in accordance with military orders or stationed in this state before a temporary assignment to duties outside of this state.
  6. "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.

**SECTION 6. AMENDMENT.** Section 43-51-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-51-11.1. Military spouses - Licensure.**

1. A board shall adopt rules regarding licensure of a military spouse or shall grant on a case-by-case basis exceptions to the board's licensing standards to allow a military spouse to practice the occupation or profession in the state if upon application to the board:
  - a. The military spouse demonstrates competency in the occupation or profession through methods or standards determined by the board which must include experience in the occupation or profession for at least two of the four years preceding the date of application under this section; and
  - b. ~~The military spouse pays any fees required by the board from which the applicant is seeking a license; and~~
  - c. The board determines the exception issuance of the license will not substantially increase the risk of harm to the public. A board with authority to require an applicant to submit to a statewide and national criminal history record check under section 12-60-24 may order such a record check under this subdivision.



2. ~~Under subsection 1, a~~ board ~~may~~ shall issue a provisional license or temporary permit to a military spouse for which ~~one or more of the licensure requirements under subsection 1 have not been substantially met. A board may not charge a military spouse any fees for a provisional license or temporary permit under this subsection.~~ A provisional license or temporary permit issued under this subsection may not exceed two years and remains valid while the military spouse is making progress toward satisfying the necessary unmet licensure requirements. A military spouse may practice under a provisional license or temporary permit issued under this subsection until any of the following occurs:
  - a. The board grants or denies the military spouse a North Dakota license under subsection 1 or grants a North Dakota license under the traditional licensure method;
  - b. The provisional license or temporary permit expires; ~~or~~
  - c. The military spouse fails to comply with the terms of the provisional license or temporary permit; ~~or~~
  - d. The board revokes the provisional license or temporary permit based on a determination revocation is necessary to protect the health and safety of the residents of the state.
3. ~~A board that is exempted from this chapter under subdivision a of subsection 1 of section 43-51-01 may issue a license, provisional license, or temporary permit to a military spouse in the same manner as provided under subsections 1 and 2. A board that may elect to subject the board to this chapter under subdivision b of subsection 1 of section 43-51-01 may issue a license, provisional license, or temporary permit to a military spouse in the same manner as provided under subsections 1 and 2 regardless of whether the board has adopted rules to subject the board to this chapter. The state board of architecture and landscape architecture is exempt from the mandate in subsection 1; however, the board voluntarily may issue a license, provisional license, or temporary permit under subsections 1 and 2.~~
4. A military spouse issued a license under this section has the same rights and duties as a licensee issued a license under the traditional licensure method.
5. If within thirty days of receipt of a completed application under subsection 1 the board does not grant or deny a license under subsection 1 or does not issue a provisional license or temporary permit under subsection 2, the board automatically shall issue a provisional license or temporary permit. A provisional license or temporary permit issued under this subsection remains valid until the board grants or denies the application for licensure under subsection 1 or issues a provisional license or temporary permit under subsection 2.
6. For purposes of this section, the term "board" includes the state board of accountancy, state electrical board, North Dakota real estate appraiser qualifications and ethics board, state real estate commission, secretary of state with respect to contractor licensing, North Dakota board of medicine, and state board of dental examiners.

**SECTION 7.** A new section to chapter 43-51 of the North Dakota Century Code is created and enacted as follows:

**Members of the military and military spouses - Licensure applications.**

1. On each licensure application and renewal form, a board shall inquire and maintain a record of whether an applicant or licensee is a member of the military or military spouse. If an applicant self-identifies as and provides the board with satisfactory proof of being a military spouse, the board immediately shall commence the process to issue a license, provisional license, or temporary permit under section 43-51-11.1.
2. For purposes of this section, the term "board" includes the state board of accountancy, state electrical board, North Dakota real estate appraiser qualifications and ethics board, state real estate commission, secretary of state with respect to contractor licensing, North Dakota board of medicine, and state board of dental examiners.

**SECTION 8. OCCUPATIONAL LICENSURE BOARDS - REPORT TO DEPARTMENT OF COMMERCE.** During the 2019-20 interim, each occupational and professional board shall review its licensure laws and rules to determine whether the laws and rules are consistent with sections 43-51-11 and 43-51-11.1 and section 7 of this Act. Before August 2020, on a form developed by the department of commerce, each occupational and professional board shall submit a report to the department of commerce on the status and outcome of that board's review of its laws and rules.

Approved April 25, 2019

Filed April 26, 2019

# OFFICES AND OFFICERS

## CHAPTER 370

### SENATE BILL NO. 2340

(Senators Unruh, Cook)  
(Representatives Heinert, Porter)

AN ACT to create and enact subsection 6 of section 44-04-18.10 of the North Dakota Century Code, relating to protection of records shared for emergency purposes; and to amend and reenact section 44-04-18.4 of the North Dakota Century Code, relating to confidentiality of records regarding emergency planning and response.

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

**SECTION 1. AMENDMENT.** Section 44-04-18.4 of the North Dakota Century Code is amended and reenacted as follows:

#### **44-04-18.4. Confidentiality of trade secret, proprietary, commercial, financial, and research information.**

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. Under this section, unless the context otherwise requires:
  - a. "Commercial information" means information pertaining to buying or selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
  - b. "Financial information" means information pertaining to monetary resources of a person that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
  - c. "Proprietary information" includes:
    - (1) Information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.
    - (2) Information received from a private business that has entered or is negotiating an agreement with a public entity to conduct research or manufacture or create a product for potential commercialization.

- (3) A discovery or innovation generated by the research information, technical information, financial information, or marketing information acquired under activities described under paragraph 1 or 2.
  - (4) A document specifically and directly related to the licensing or commercialization resulting from activities described under paragraph 1, 2, or 6.
  - (5) Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business.
  - (6) A discovery or innovation produced by the public entity that an employee or the entity intends to commercialize.
  - (7) A computer software program and components of a computer software program that are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique, or process supplied to a public entity that is the subject of efforts by the supplying person to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that might obtain economic value from its disclosure or use.
  - (8) A discovery or innovation that is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, combination of devices, method, technique, technical know-how or process that is for use, or is used, in the operation of a business and is supplied to or prepared by a public entity that is the subject of efforts by the supplying or preparing person to maintain its secrecy and provides the preparing person an advantage or an opportunity to obtain an advantage over those who do not know or use it or that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, a person that might obtain economic value from its disclosure or use.
- d. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, technical know-how, or process, that:
- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
  - (2) Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.
3. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.

4. This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official.
5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
  - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, expand within this state, or partner with a public entity to conduct research or to license a discovery or innovation. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
  - b. Trade secrets and proprietary, commercial, or financial information received from a person that is interested in applying for or receiving financing, technical assistance, or other forms of business assistance.
6. Unless made confidential under subsection 1 or made exempt under subsection 5:
  - a. Bids received by a public entity in response to an invitation for bids by the public entity are exempt until all of the bids have been received and opened by the public entity.
  - b. Proposals received by a public entity in response to a request for proposals are exempt records until a notice of intent to award is issued.
  - c. Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.
7. Unless made confidential under subsection 1, records received or distributed by the state department of emergency services under chapter 37-17.1 and the state local intelligence center from the federal government and any public or private agency or entity for emergency or disaster prevention, protection, mitigation, preparation, response, and recovery, or for cyber or physical threat are exempt. Records in the possession or under the control of a public entity which relate to cybersecurity information or critical infrastructure, the disclosure of which may expose or create vulnerability of critical infrastructure systems; or the safeguarding of telecommunications, electric, water, sanitary sewage, storm water drainage, energy, fuel supply, hazardous liquid, natural gas, coal, or other critical infrastructure system, are exempt.
  - a. Upon receipt of a request for records under this subsection which originated in a federal agency or entity and are in the possession of the state department of emergency services, state local intelligence center, or other public entity, the requester must be referred to the federal agency or entity from which the records originated to submit an application under the applicable federal laws or rules.
  - b. For purposes of this section, "cybersecurity" means processes or capabilities that protect and defend systems, communications, and information from exploitation and unauthorized use or modification.

- c. For purposes of this section, "critical infrastructure" has the same meaning as in subdivision a of subsection 2 of section 44-04-24.
8. Unless made confidential under subsection 1, university research records are exempt. "University research records" means data and records, other than a financial or administrative record, produced or collected by or for faculty or staff of an institution under the control of the state board of higher education in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone, or in conjunction with a governmental or private entity, provided the information has not been publicly released, published, or patented.
  9. Personally identifiable study information is confidential. "Personally identifiable study information" means information about an individual participating in a human research study or project at an institution under the control of the state board of higher education which requires prospective institutional review board review or a determination of exemption, if the information can be used to distinguish or trace the individual's identity, or is linked or linkable to the individual. Examples of personally identifiable study information include name, maiden name, mother's maiden name, alias, personal identification number, social security number, passport number, driver's license number, taxpayer identification number, financial account or credit card number, address, email address, photographic images, fingerprints, handwriting, and other biometric data. Information about participants in human subjects research which does not constitute personally identifiable study information but is part of a human subjects research study or project at an institution under the control of the state board of higher education requiring prospective institutional review board review or a determination of exemption is a university research record under subsection 8.
  10. Subsections 8 and 9 do not apply to a student record or other information disclosed by an institution under the control of the state board of higher education to the statewide longitudinal data system.

**(Contingent effective date - [See note](#)) Confidentiality of trade secret, proprietary, commercial, financial, and research information.**

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. Under this section, unless the context otherwise requires:
  - a. "Commercial information" means information pertaining to buying or selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
  - b. "Financial information" means information pertaining to monetary resources of a person that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
  - c. "Proprietary information" includes:

- (1) Information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.
  - (2) Information received from a private business that has entered or is negotiating an agreement with a public entity to conduct research or manufacture or create a product for potential commercialization.
  - (3) A discovery or innovation generated by the research information, technical information, financial information, or marketing information acquired under activities described under paragraph 1 or 2.
  - (4) A document specifically and directly related to the licensing or commercialization resulting from activities described under paragraph 1, 2, or 6.
  - (5) Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business.
  - (6) A discovery or innovation produced by the public entity that an employee or the entity intends to commercialize.
  - (7) A computer software program and components of a computer software program that are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique, or process supplied to a public entity that is the subject of efforts by the supplying person to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that might obtain economic value from its disclosure or use.
  - (8) A discovery or innovation that is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, combination of devices, method, technique, technical know-how or process that is for use, or is used, in the operation of a business and is supplied to or prepared by a public entity that is the subject of efforts by the supplying or preparing person to maintain its secrecy and provides the preparing person an advantage or an opportunity to obtain an advantage over those who do not know or use it or that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, a person that might obtain economic value from its disclosure or use.
- d. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, technical know-how, or process, that:
- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and

- (2) Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.
3. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or department of environmental quality or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.
  4. This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official.
  5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
    - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, expand within this state, or partner with a public entity to conduct research or to license a discovery or innovation. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
    - b. Trade secrets and proprietary, commercial, or financial information received from a person that is interested in applying for or receiving financing, technical assistance, or other forms of business assistance.
  6. Unless made confidential under subsection 1 or made exempt under subsection 5:
    - a. Bids received by a public entity in response to an invitation for bids by the public entity are exempt until all of the bids have been received and opened by the public entity.
    - b. Proposals received by a public entity in response to a request for proposals are exempt records until a notice of intent to award is issued.
    - c. Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.
  7. Unless made confidential under subsection 1, records received or distributed by the state department of emergency services under chapter 37-17.1 and the state local intelligence center from the federal government and any public or private agency or entity for emergency or disaster prevention, protection, mitigation, preparation, response, and recovery, or for cyber or physical threat are exempt. Records in the possession or under the control of a public entity which relate to cybersecurity information or critical infrastructure, the disclosure of which may expose or create vulnerability of critical infrastructure systems; or the safeguarding of telecommunications, electric, water, sanitary sewage, storm water drainage, energy, fuel supply, hazardous liquid, natural gas, coal, or other critical infrastructure system, are exempt.
    - a. Upon receipt of a request for records under this subsection which originated in a federal agency or entity and are in the possession of the



- state department of emergency services, state local intelligence center, or other public entity, the requester must be referred to the federal agency or entity from which the records originated to submit an application under the applicable federal laws or rules.
- b. For purposes of this section, "cybersecurity" means processes or capabilities that protect and defend systems, communications, and information from exploitation and unauthorized use or modification.
  - c. For purposes of this section, "critical infrastructure" has the same meaning as in subdivision a of subsection 2 of section 44-04-24.
8. Unless made confidential under subsection 1, university research records are exempt. "University research records" means data and records, other than a financial or administrative record, produced or collected by or for faculty or staff of an institution under the control of the state board of higher education in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone, or in conjunction with a governmental or private entity, provided the information has not been publicly released, published, or patented.
  9. Personally identifiable study information is confidential. "Personally identifiable study information" means information about an individual participating in a human research study or project at an institution under the control of the state board of higher education which requires prospective institutional review board review or a determination of exemption, if the information can be used to distinguish or trace the individual's identity, or is linked or linkable to the individual. Examples of personally identifiable study information include name, maiden name, mother's maiden name, alias, personal identification number, social security number, passport number, driver's license number, taxpayer identification number, financial account or credit card number, address, email address, photographic images, fingerprints, handwriting, and other biometric data. Information about participants in human subjects research which does not constitute personally identifiable study information but is part of a human subjects research study or project at an institution under the control of the state board of higher education requiring prospective institutional review board review or a determination of exemption is a university research record under subsection 8.
  10. Subsections 8 and 9 do not apply to a student record or other information disclosed by an institution under the control of the state board of higher education to the statewide longitudinal data system.

**SECTION 2.** Subsection 6 of section 44-04-18.10 of the North Dakota Century Code is created and enacted as follows:

6. Records confidential or exempt under subsection 7 of section 44-04-18.4 and which are required to be disclosed to another entity for emergency or disaster prevention, protection, mitigation, response, and recovery or for cybersecurity planning, mitigation, or threat remain confidential or exempt after the required disclosure.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 371

### SENATE BILL NO. 2221

(Senators J. Lee, Kreun, Mathern)  
(Representatives Roers Jones, Schatz)

AN ACT to amend and reenact section 44-04-18.6 of the North Dakota Century Code, relating to exempting records of communications between legislators and public employees from open records laws.

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

**SECTION 1. AMENDMENT.** Section 44-04-18.6 of the North Dakota Century Code is amended and reenacted as follows:

#### **44-04-18.6. Access to legislative records and information.**

1. The following records, regardless of form or characteristic, of or relating to the legislative council, the legislative management, the legislative assembly, the house of representatives, the senate, or a member of the legislative assembly are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota: a
  - a. ~~A record of a purely personal or private nature;~~a;
  - b. ~~A record that is legislative council work product or is legislative council-client communication;~~a;
  - c. ~~A record that reveals the content of private communications between a member of the legislative assembly and any person;~~i; and, ~~except~~
  - d. Except with respect to a governmental entity determining the proper use of telephone service, a record of telephone usage which identifies the parties or lists the telephone numbers of the parties involved.
2. The exception in subdivision c of subsection 1 applies to records possessed by a member of the legislative assembly or by any other public officer or employee.
3. This section does not apply to any record distributed at a meeting subject to section 44-04-19 and section 5 of article XI of the Constitution of North Dakota.

Approved April 24, 2019

Filed April 24, 2019

## CHAPTER 372

### HOUSE BILL NO. 1392

(Representatives Zubke, Dockter, Nathe, Westlind)  
(Senator Bekkedahl)

AN ACT to create and enact section 44-04-18.29 of the North Dakota Century Code, relating to confidentiality of records received by the board of university and school lands; and to provide a penalty.

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

**SECTION 1.** Section 44-04-18.29 of the North Dakota Century Code is created and enacted as follows:

**44-04-18.29. Information received for audits by the board of university and school lands.**

A record received by the board of university and school lands from a private entity for purposes of the board's audit of the entity's coal, oil, gas, or other royalty payments to the board is confidential. However, the board may furnish information to the attorney general, other state agencies, a prosecuting official requiring the information for use in the prosecuting official's official duties, or for legislative investigations under chapter 54-03.2. Confidential information furnished by the board to any third party under this section remains confidential while in the possession of the third party. Confidential information received by the board from any third party under this section remains confidential while in the possession of the board.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 373

### SENATE BILL NO. 2218

(Senators J. Lee, J. Roers, K. Roers)  
(Representatives Roers Jones, Westlind)

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to records of individuals who provide information to public social service agencies.

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

**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

##### **Identity of reporter to social services agency - Exempt records.**

1. For purposes of this section:
  - a. "Human services" means services provided to an individual or an individual's family in need of services to assist the individual or the individual's family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing; and
  - b. "Public social services agency" means a state, county, or local public agency that provides human services, and includes regional human service centers, county social services boards, multicounty social services districts, and the department of human services.
2. The name, address, telephone number, electronic mail address, or other record that reasonably could be used to identify an individual who provided information to a public social service agency is an exempt record if:
  - a. The information relates to a matter involving human services over which the agency has regulatory jurisdiction; and
  - b. The agency determines the individual had a good-faith belief the information related to a possible violation of law when the individual provided it to the agency.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 374

### HOUSE BILL NO. 1132

(Representatives Lefor, Bosch, Meier)  
(Senators Burckhard, D. Larson, Wardner)

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to an exemption from open records laws for background interviews regarding law enforcement officer job applicants.

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

**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

#### **Background interviews for law enforcement officer applications - Exempt records.**

Any record revealing the substance of, or the individual interviewed in, a background interview conducted as part of the consideration of an applicant for a position as a law enforcement officer is an exempt record. For purposes of this section, "background interview" means an interview with an individual, other than the applicant for a law enforcement officer position, which relates to the fitness, character, behavior, or other qualifications of the applicant.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 375

### SENATE BILL NO. 2209

(Senators Klein, Heckaman, Myrdal)  
(Representatives Damschen, Devlin, Holman)

AN ACT to amend and reenact section 44-04-24 of the North Dakota Century Code, relating to protection for records related to critical infrastructure and security planning, mitigation, or threats.

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

**SECTION 1. AMENDMENT.** Section 44-04-24 of the North Dakota Century Code is amended and reenacted as follows:

#### **44-04-24. Security system plan - Disaster and cybersecurity information - Exemption.**

1. A security system plan kept by a public entity ~~is, and records regarding disaster mitigation, preparation, response, vulnerability, or recovery, or for cybersecurity planning, mitigation, or threat, are exempt from the provisions of~~ section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
2. As used in this section:
  - a. "Critical infrastructure" means public buildings, systems, including telecommunications centers and computers, power generation plants, dams, bridges, and similar key resources, ~~and systems related to utility services, fuel supply, energy, hazardous liquid, natural gas, or coal,~~ whether physical or virtual, so vital to the state that the incapacity or destruction of these systems would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters.
  - b. "Security system plan" includes ~~all records;~~
    - (1) ~~Records,~~ information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, communications, or consultations ~~or portions of any such plan~~ relating directly to the physical or electronic security of a public facility, or any critical infrastructure, whether owned by or leased to the state or any of its political subdivisions, or any privately owned or leased critical infrastructure if the plan or a portion of the plan is in the possession of a public entity; ~~threat~~
    - (2) ~~Information relating to cybersecurity defenses, or threats, attacks, attempted attacks, and vulnerabilities of cyber system operations relating directly to the physical or electronic security of a public facility, or any critical infrastructure, whether owned by or leased to the state or any of its political subdivisions, or any privately owned or leased~~

critical infrastructure if the information is in the possession of a public entity;

(3) Threat assessments; vulnerability

(4) Vulnerability and capability assessments conducted by a public entity, or any private entity; threat

(5) Threat response plans; and emergency

(6) Emergency evacuation plans.

3. This exemption applies to security system plans received by a public entity before, on, or after March 20, 2003.
4. Nothing in this section may be construed to limit disclosure required for necessary construction, renovation, or remodeling work on a public building. Disclosure under this subsection does not constitute public disclosure.
5. Records deemed exempt under this section and disclosed to another entity continue to be exempt in the possession of the receiving entity.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 376

### HOUSE BILL NO. 1110

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact section 44-06.1-13.1 and a new section to chapter 44-06.1 of the North Dakota Century Code, relating to the adoption of the Revised Uniform Law on Notarial Acts; and to amend and reenact sections 11-18-15, 44-06.1-01, 44-06.1-03, 44-06.1-18, and 47-19-26 of the North Dakota Century Code, relating to the adoption of the Revised Uniform Law on Notarial Acts.

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

**SECTION 1. AMENDMENT.** Section 11-18-15 of the North Dakota Century Code is amended and reenacted as follows:

**11-18-15. Notary seal on documents filed with recorder - Stamp or imprint allowed.**

The notary seal on any document filed with a recorder may be in:

1. In either a stamped or an imprinted form; or
2. An official stamp, as defined in section 44-06.1-01.

**SECTION 2. AMENDMENT.** Section 44-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **44-06.1-01. Definitions.**

As provided in this chapter:

1. "Acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or person identified in the record.
2. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
3. "Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.
4. "In a representative capacity" means acting as:
  - a. An authorized officer, agent, partner, trustee, or other representative for a person other than an individual;



- b. A public officer, personal representative, guardian, or other representative, in the capacity stated in a record;
  - c. An agent or attorney in fact for a principal; or
  - d. An authorized representative of another in any other capacity.
5. "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy except as provided in subsection 7 of section 44-06.1-23, and noting a protest of a negotiable instrument.
6. "Notarial officer" means a notary public or other individual authorized to perform a notarial act.
7. "Notary public" means an individual commissioned to perform a notarial act by the secretary of state.
8. "Official stamp" means a physical image affixed to a tangible record or an electronic image attached to or logically associated with an electronic record.
9. "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- ~~10.~~ "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.
- ~~10-11.~~ "Sign" means, with present intent to authenticate or adopt a record:
- a. To execute or adopt a tangible symbol; or
  - b. To attach to or logically associate with the record an electronic symbol, sound, or process.
- ~~11-12.~~ "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.
- ~~12-13.~~ "Stamping device" means:
- a. A physical device capable of affixing to a tangible record an official stamp; or
  - b. An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.
- ~~13-14.~~ "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

**SECTION 3. AMENDMENT.** Section 44-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**44-06.1-03. Authority to perform notarial acts.**

1. A notarial officer may perform notarial acts authorized by this chapter or by other law of this state.
2. A notarial officer may certify a tangible copy of an electronic record is an accurate copy of the electronic record. The prohibition under subdivision b of subsection 7 of section 44-06.1-23 does not apply to a tangible copy certified under this subsection.

**SECTION 4.** Section 44-06.1-13.1 of the North Dakota Century Code is created and enacted as follows:

**44-06.1-13.1. Notarial Act performed for remotely located individual.**

1. As used in this section, unless the context otherwise requires:
  - a. "Communication technology" means an electronic device or process that:
    - (1) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and
    - (2) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.
  - b. "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.
  - c. "Identity proofing" means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.
  - d. "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.
  - e. "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection 3.
2. A remotely located individual may comply with section 44-06.1-05 by using communication technology to appear before a notary public.
3. A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:
  - a. The notary public:
    - (1) Has personal knowledge under subsection 1 of section 44-06.1-06 of the identity of the individual;
    - (2) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing

before the notary public under subsection 2 of section 44-06.1-06 or this section; or

- (3) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing:

  - b. The notary public is able reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;
  - c. The notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act; and
  - d. For a remotely located individual located outside the United States:

    - (1) The record:

      - (a) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or
      - (b) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and
    - (2) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.
4. If a notarial act is performed under this section, the certificate of notarial act required by section 44-06.1-14 and the short-form certificate provided in section 44-06.1-19 must indicate the notarial act was performed using communication technology.
5. A short-form certificate provided in section 44-06.1-19 for a notarial act subject to this section is sufficient if it:

  - a. Complies with the rules adopted under subdivision a of subsection 8; or
  - b. Is in the form provided in section 44-06.1-19 and contains a statement substantially as follows: "This notarial act involved the use of communication technology."
6. A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audiovisual recording created under subdivision c of subsection 3 or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subdivision d of subsection 8, the recording must be retained for a period of at least ten years after the recording is made.
7. Before a notary public performs the notary public's initial notarial act under this section, the notary public must notify the secretary of state that the notary public will be performing notarial acts with respect to remotely located

individuals and identify the technologies the notary public intends to use. If the secretary of state has established standards under subsection 8 and section 44-06.1-25 for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

8. In addition to adopting rules under section 44-06.1-25, the secretary of state may adopt rules under this section regarding performance of a notarial act. The rules may:
  - a. Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;
  - b. Establish standards for communication technology and identity proofing;
  - c. Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and
  - d. Establish standards and a period for the retention of an audiovisual recording created under subdivision c of subsection 3.
9. Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state shall consider:
  - a. The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the national association of secretaries of state;
  - b. Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and
  - c. The views of governmental officials and entities and other interested persons.
10. By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audiovisual recording created under subdivision c of subsection 3, the provider of the communication technology, identity proofing, or storage appoints the secretary of state as the provider's agent for service of process in any civil action in this state related to the notarial act.

**SECTION 5. AMENDMENT.** Section 44-06.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**44-06.1-18. Notification regarding performance of notarial acts on electronic record - Selection of technology - Acceptance of tangible copy of electronic record.**

1. A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. An individual may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

2. Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the secretary of state that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the secretary of state has established standards for approval of technology pursuant to section 44-06.1-25, the technology must conform to the standards. If the technology conforms to the standards, the secretary of state shall approve the use of the technology.
3. A recorder shall accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies the tangible copy is an accurate copy of the electronic record.

**SECTION 6.** A new section to chapter 44-06.1 of the North Dakota Century Code is created and enacted as follows:

**Journals.**

1. A notary public shall maintain a journal in which the notary public chronicles all notarial acts the notary public performs with respect to a remotely located individual under section 44-06.1-13.1. The notary public shall retain the journal for ten years after the performance of the last notarial act chronicled in the journal.
2. A journal may be created on a tangible medium or in an electronic format. A notary public shall maintain only one journal at a time to chronicle all notarial acts performed regarding tangible records and one or more journals to chronicle all notarial acts performed regarding electronic records. If a journal is maintained on a tangible medium, it must be a permanent, bound register with numbered pages. If the journal is maintained in an electronic format, it must be in a permanent, tamper-evident electronic format complying with the rules of the secretary of state.
3. An entry in a journal must be made contemporaneously with performance of the notarial act and contain the following information:
  - a. The date and time of the notarial act;
  - b. A description of the record, if any, and type of notarial act;
  - c. The full name and address of each individual for whom the notarial act is performed;
  - d. If identity of the individual is based on personal knowledge, a statement to that effect;
  - e. If identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of the identification credential; and
  - f. The fee, if any, charged by the notary public.

4. If the journal of a notary public is lost, the notary public loses access to the journal, or the journal is stolen, the notary public promptly shall notify the secretary of state upon discovering the journal is lost, access is lost, or the journal is stolen.
5. On resignation from, or the revocation or suspension of, the commission of a notary public, the notary public shall retain the journal in accordance with subsection 1 of this section and inform the secretary of state where the journal is located.
6. Instead of retaining a journal as provided in subsections 1 and 5, a current or former notary public may transmit the journal to a repository approved by the secretary of state.
7. Upon the death or adjudication of incompetency of a current or former notary public, the personal representative or guardian of the notary public shall retain the journal as provided in subsections 1 and 5 or transmit the journal to a repository approved by the secretary of state.

**SECTION 7. AMENDMENT.** Section 47-19-26 of the North Dakota Century Code is amended and reenacted as follows:

**47-19-26. Certificate of acknowledgment - Forms.**

An officer taking an acknowledgment of an instrument within this state must endorse ~~thereon~~, or attach ~~thereto, the instrument~~ a certificate substantially in the forms prescribed in sections 47-19-27, 47-19-28, 47-19-29, and 47-19-30 or in subsections 1 and 2 of section 44-06.1-19.

Approved March 8, 2019

Filed March 8, 2019

# PRINTING LAWS

## CHAPTER 377

### HOUSE BILL NO. 1117

(Representatives Devlin, Holman, Magrum)  
(Senators Dwyer, Heckaman, Klein)

AN ACT to create and enact a new section to chapter 46-05 of the North Dakota Century Code, relating to publication of legal notices in a newspaper and online.

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

**SECTION 1.** A new section to chapter 46-05 of the North Dakota Century Code is created and enacted as follows:

#### **Publication of legal notices on website.**

When a legal notice is required by law to be published in a newspaper, the newspaper also shall publish the notice on a statewide legal notices website maintained by the North Dakota newspaper association and on the newspaper's website in a location open and free to the public, if the newspaper maintains a website, at no additional cost to the entity placing the notice. If an insubstantial error in the notice occurs as a result of placement on the website and the error is the fault of the newspaper, the error does not affect the validity and effectiveness of the notice.

Approved March 12, 2019

Filed March 13, 2019

# PROPERTY

## CHAPTER 378

### HOUSE BILL NO. 1251

(Representatives Louser, Adams, Beadle, Blum, Boschee, B. Koppelman, Lefor,  
Mock, D. Ruby)  
(Senators D. Larson, Meyer)

AN ACT to create and enact a new section to chapter 47-10 of the North Dakota Century Code, relating to property disclosure requirements.

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

**SECTION 1.** A new section to chapter 47-10 of the North Dakota Century Code is created and enacted as follows:

##### Property disclosure - Requirements.

1. This section applies to a transaction for the sale, exchange, or purchase of real property if:
  - a. A real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm represents or assists a party to the transaction; and
  - b. The real property is an owner-occupied primary residence located in this state being sold or exchanged by the owner.
2. Before the parties sign an agreement for the sale, exchange, or purchase of real property, the seller shall make a written disclosure to the prospective buyer. The written disclosure must include all material facts of which the seller is aware could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which the seller is aware. The written disclosure must include latent defects, general condition, environmental issues, structural systems, and mechanical issues regarding the property. The seller shall make the written disclosure in good faith and based upon the best of the seller's knowledge at the time of the disclosure.
3. Following the sale, exchange, or purchase of real property, the brokerage firm shall retain a copy of the written disclosure completed and signed by the seller and signed by the prospective buyer. The brokerage firm's duties under this section do not supersede any other common law or statutory duties.
4. The North Dakota real estate commission shall establish and make available a written disclosure form meeting the requirements of this section. In establishing the form, the commission shall consult with stakeholders, such as professional organizations.



5. If a real estate broker, real estate broker associate, or real estate salesperson who is associated with a real estate brokerage firm violates this section, the state real estate commission may investigate and take disciplinary action under section 43-23-11.1.

Approved April 17, 2019

Filed April 18, 2019

## CHAPTER 379

### HOUSE BILL NO. 1150

(Representatives Tveit, Damschen, Laning)  
(Senators O. Larsen, Wanzek)

AN ACT to amend and reenact subsection 1 of section 47-16-07.1 of the North Dakota Century Code, relating to lessor security deposit limitations.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 47-16-07.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The lessor of real property or a dwelling who requires money as a security deposit, however denominated, shall deposit the money in a federally insured interest-bearing savings or checking account for the benefit of the tenant. The security deposit and any interest accruing on the deposit must be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A lessor may not demand or receive security, however denominated, in an amount or value in excess of one month's rent, except a:
  - a. A lessor may accept an amount or value up to two month's rent, as security, from an individual convicted of a felony offense as an incentive to rent the property to the individual.
  - b. A lessor may demand an amount or value up to two months rent, as security, from an individual who has had a judgment entered against that individual for violating the terms of a previous rental agreement.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 380

### SENATE BILL NO. 2212

(Senators Bekkedahl, Patten, Unruh)  
(Representatives Hatlestad, Jones, Steiner)

AN ACT to amend and reenact section 47-16-39.2 of the North Dakota Century Code, relating to the inspection of production and royalty payment records by the board of university and school lands; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 47-16-39.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **47-16-39.2. Inspection of production and royalty payment records - Penalty.**

1. A royalty owner, a royalty owner's assignee, or a designated representative, upon written notice, is entitled to inspect and copy the oil and gas production and royalty payment records for the lease of the person obligated to pay royalties under the lease or division order. The person obligated to pay royalties under the lease shall make that person's oil and gas royalty payment and production records available for inspection and copying at that person's usual and customary place of business within the United States. A royalty owner may bring an action to compel the person obligated to pay royalties to allow inspection and copying of oil and gas production royalty payment records. In order for the royalty owner to prevail in such an action, the royalty owner must establish that:
  1. a. The royalty owner or the royalty owner's assignee complied with notice requirements of this section;
  2. b. The notice specified the lease involved, the time period under review and the records requested;
  3. c. The royalty owner notified the person obligated to pay royalties at the address printed on the information statement as prescribed by rules adopted by the industrial commission pursuant to section 38-08-06.3; and
  4. d. The person obligated to pay royalties denied inspection of the records or failed to respond within thirty days of service of notice.
2. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the royalty owner or the royalty owner's assignee is successful in any proceeding brought pursuant to this section, the district court shall allow the royalty owner or the royalty owner's assignee to recover court costs; reasonable costs, fees, disbursements, and expenses incurred by the royalty owner or the royalty owner's assignee or a designated representative in inspecting and copying the oil and gas production and royalty payment records of the person obligated to pay royalties under the lease; and reasonable attorney's fees.

3. If a royalty owner, a royalty owner's assignee, or a designated representative is the board of university and school lands:
  - a. The records in subsection 1 must be sent electronically, or in a manner acceptable to the board, to a location designated by the board.
  - b. Notwithstanding subsection 2, at the discretion of the board, a proceeding brought under this section may be brought in the district court of Burleigh County or in the county in which the oil or gas well is located.
4. If the board of university and school lands is successful in any proceeding brought under this section, the district court shall allow the board to recover court costs; reasonable costs, fees, disbursements, and expenses incurred by the board in inspecting the copying the oil and gas production and royalty payment records of the person obligated to pay royalties under the lease; and reasonable attorney's fees.
  - a. The district court also shall assess a civil penalty of two thousand dollars per day for each day the person obligated to pay royalties under the lease failed to send the oil and gas royalty payment and production records to the board in accordance with subsection 1.
  - b. The civil penalty under subdivision a ceases to accrue on the date the proceedings are initiated under subsection 1.

Approved April 10, 2019

Filed April 11, 2019

# PUBLIC BUILDINGS

## CHAPTER 381

### HOUSE BILL NO. 1356

(Representatives Schreiber-Beck, M. Johnson, Lefor, Mitskog, Trottier, Zubke)  
(Senators Hogan, Klein, Kreun, J. Lee, Luick)

AN ACT to amend and reenact sections 43-19.1-28, 48-01.2-02.1, and 48-01.2-10 of the North Dakota Century Code, relating to bids, plans, and specifications for public improvements and bond thresholds.

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

**SECTION 1. AMENDMENT.** Section 43-19.1-28 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-19.1-28. Public works.**

Except as otherwise provided by law, the state and its political subdivisions may not engage in the construction of public works involving the practice of professional engineering when the contemplated expenditure for the project exceeds the sum of ~~one~~two hundred ~~fifty~~ thousand dollars, unless the engineering drawings and specifications and estimates have been prepared by, and the construction administration and construction observation services are executed under the supervision of, a registered professional engineer. Any engineering contract executed in violation of this section is void.

**SECTION 2. AMENDMENT.** Section 48-01.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **48-01.2-02.1. Public improvement construction threshold.**

1. The threshold for bidding construction of a public improvement is ~~one~~two hundred ~~fifty~~ thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is ~~one~~two hundred ~~fifty~~ thousand dollars.
2. Notwithstanding the thresholds in subsection 1, if the state or a political subdivision undertakes the construction of a public improvement and there is reason to believe that engineering or architectural services are necessary to protect the health, safety or welfare of the public, the state or political subdivision shall consider consulting with an engineer or architect.

**SECTION 3. AMENDMENT.** Section 48-01.2-10 of the North Dakota Century Code is amended and reenacted as follows:

##### **48-01.2-10. Bonds from contractors for public improvements.**

1. Unless otherwise provided under this chapter, a governing body authorized to enter a contract for the construction of a public improvement in excess of ~~one~~two hundred ~~fifty~~ thousand dollars shall take from the contractor a bond before permitting any work to be done on the contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor performed and any supplies, and materials furnished and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor or any subcontractor may sue on the bond.
2. A governing body may not require any person required to provide a surety bond to obtain the surety bond from a specified insurance or surety company or insurance producer or to submit financial data to the company or producer.

Approved April 24, 2019

Filed April 24, 2019

## CHAPTER 382

### HOUSE BILL NO. 1136

(Representatives Keiser, Bosch, Lefor)  
(Senators Burckhard, Klein, Vedaa)

AN ACT to amend and reenact section 48-01.2-06 of the North Dakota Century Code, relating to bid requirements for public improvements.

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

**SECTION 1. AMENDMENT.** Section 48-01.2-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **48-01.2-06. Bid requirements for public improvements.**

1. Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract or any combination of individual contracts is in excess of the threshold established under section 48-01.2-02.1. If a general, mechanical, or electrical contract is estimated to be less than twenty-five percent of the threshold, the contract may be included in one of the other prime contracts. A governing body may allow submission of a single prime bid for the complete project or bids for other specialized portions of the project. A governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest responsible multiple bids for the project.
2. If a bid for the general, electrical, or mechanical portions of a project is not received, a governing body may negotiate:
  - a. Negotiate a contract amendment, up to an additional one hundred fifty thousand dollars, with the general, electrical, or mechanical contractor whose contract would represent the largest portion of the project cost for providing the portion of the project for which a bid was not received without rebidding all or part of the project; or
  - b. Award a contract for each portion of a project that received responsible bids pursuant to section 48-01.2-07 and readvertise for bids on the portion of the project that did not receive bids.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 383

### HOUSE BILL NO. 1056

(Representatives Heinert, M. Ruby, Meier, Dockter, Keiser, Klemin, Pyle)  
(Senators Dever, Bekkedahl, Marcellais)

AN ACT to create and enact section 48-05-01.1 of the North Dakota Century Code, relating to the display of the prisoner of war and missing in action flag on the state capitol grounds; and to declare an emergency.

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

**SECTION 1.** Section 48-05-01.1 of the North Dakota Century Code is created and enacted as follows:

**48-05-01.1. Display of prisoner of war and missing in action flag - State capitol grounds.**

The prisoner of war and missing in action flag:

1. Must be flown daily on the state capitol grounds at the following flagpole locations:
  - a. Immediately south of the state capitol building;
  - b. In front of the all veterans memorial; and
  - c. On the east side of the heritage center.
2. May be flown either below the flag of the United States on the same flagpole or alone on a separate flagpole.
3. Must be displayed using proper flag etiquette.

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

Approved April 30, 2019

Filed May 1, 2019



## CHAPTER 384

### SENATE BILL NO. 2188

(Senators Davison, Meyer)  
(Representatives Bosch, Dockter)

AN ACT to amend and reenact section 48-09-01 of the North Dakota Century Code, relating to bid requirements for park districts.

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

**SECTION 1. AMENDMENT.** Section 48-09-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **48-09-01. Granting of concessions for cafes, restaurants, and confectioneries on public buildings and grounds.**

Any state official, board, or commission, any county official, board, or commission, and any municipal officer, board, or commission, having the supervision, control, and management of any state, county, or municipal building and adjacent grounds, for the public benefit and good, may grant a concession in the building or on the grounds for any cafe, restaurant, or confectionery, by renting, leasing, and licensing a concession to the highest responsible bidder at a reasonable rental per month, ~~for a period not exceeding eight years~~, and may reject any and all bids for the concession. However, the board of directors of any North Dakota fair association or board of county park commissioners may grant a concession under this chapter without letting bids.

Approved March 8, 2019

Filed March 8, 2019

# PUBLIC UTILITIES

## CHAPTER 385

### SENATE BILL NO. 2122

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to create and enact a new section to chapter 49-02 of the North Dakota Century Code, relating to an applicant paying the cost of publishing notice.

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

**SECTION 1.** A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

#### **Applicant to pay cost of publishing notice.**

When an application is filed under this title for which there is no application fee, the applicant shall pay the cost of publishing any notice issued by the commission for the application.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 386

### SENATE BILL NO. 2100

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-02-27 of the North Dakota Century Code, relating to decommissioning of solar energy conversion facilities.

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

**SECTION 1. AMENDMENT.** Section 49-02-27 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-02-27. Decommissioning of windrenewable energy conversion facilities.**

1. The commission shall adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules must address:
  - a. The anticipated life of the project;
  - b. The estimated decommissioning costs in current dollars;
  - c. The method and schedule for updating the costs of the decommissioning and restoration;
  - d. The method of ensuring that funds will be available for decommissioning and restoration;
  - e. The anticipated manner in which the project will be decommissioned and the site restored; and
  - f. Present and future natural resource development.
2. The facility owner or operator of a commercial wind energy facility shall record the location of any portion of underground foundation not removed during decommissioning with the county recorder in the county in which any such underground foundation is located.
3. The commission may adopt rules governing the decommissioning of commercial solar energy conversion facilities.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 387

### HOUSE BILL NO. 1362

(Representatives Monson, Headland, Mitskog)  
(Senators Bekkedahl, Burckhard, Robinson)

AN ACT to create and enact chapter 49-09.1 of the North Dakota Century Code, relating to the right of utilities to cross over or under a railroad right of way; and to provide for application.

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

**SECTION 1.** Chapter 49-09.1 of the North Dakota Century Code is created and enacted as follows:

#### **49-09.1-01. Definitions.**

As used in this chapter:

1. "Crossing" means the construction, operation, repair, or maintenance of a facility over, under, or across a railroad right of way by a utility. The term includes the construction, operation, repair, or maintenance of a facility that runs adjacent to and alongside the lines of a railroad for no more than one mile, or another distance agreed to by the parties, after which the facility crosses the railroad lines, terminates, or exits the railroad right of way. The term does not include longitudinal occupancy of a railroad right of way.
2. "Facility" means any item of personal property placed over, across, or under a railroad right of way for use in connection with the storage or conveyance of:
  - a. Water;
  - b. Sewage;
  - c. Electronic, telephone, data, or telegraphic communications;
  - d. Fiber optics;
  - e. Cablevision;
  - f. Electric energy;
  - g. Liquid hydrocarbons;
  - h. Gas;
  - i. Hazardous liquids; or
  - j. Other substances, including pipes, sewers, conduits, cables, valves, lines, wires, manholes, or attachments.

3. "Railroad" means any association or corporation or other entity engaged in operating a common carrier by rail or any other entity responsible for the management of crossings or collection of crossing fees.
4. "Special circumstances" includes the railroad crossing's relationship to other property, location of the crossing in urban or other developed areas, the existence of unique topography or natural resources, or other dangers inherent in the particular crossing.
5. "Utility" means cooperative electric association, electric utility, public utility, transmission company, gas utility, municipal utility, municipal power agency, municipality, joint action agency, pipeline company, rural water system, or telephone, telegraph, telecommunications, cable, or fiber optic carrier. The term includes contractors and agents.

#### **49-09.1-02. Right of utilities to cross over or under railroad right of way.**

A utility may cross over or under the railroad right of way for the placement of facilities, subject to payment of the crossing fee in section 49-09.1-05 and reasonable regulation and negotiation in good faith as to location, placement, and compensation, when the placement of facilities is outside the public right of way.

#### **49-09.1-03. Notice and application for placement.**

1. A utility that intends to place a facility across a railroad right of way shall provide notice of the placement to the railroad at least thirty days before the placement.
2. The notice must include a completed crossing application, including a drawing showing the location of the proposed crossing and the railroad's property, tracks, and wires the utility will cross.
3. The utility shall submit the crossing application on a form provided or approved by the railroad, if available.
4. The crossing application must be sent to the railroad by registered mail.
5. The application must be accompanied by the crossing fee in section 49-09.1-05, and a certificate of insurance as required in section 49-09.1-06.

#### **49-09.1-04. Commencement of construction across railroad right of way.**

Thirty-five days after the receipt by the railroad of the completed crossing application, crossing fee, and certificate of insurance, the utility may commence the construction of the crossing, unless the railroad notifies the utility in writing that the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right of way. In all other instances, the utility is deemed to have authorization to commence construction of the facility.

#### **49-09.1-05. Crossing fee - Flagging expense.**

1. Unless otherwise agreed by the parties, a utility that crosses a railroad right of way, other than a crossing within the public right of way, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing.

2. The crossing fee is in lieu of any license, permit, application, processing fee, or any other fees or charges to reimburse the railroad for the direct expenses or diminution of land value incurred by the railroad as a result of the crossing.
3. No other fee may be assessed by the railroad or by any railroad agent, contractor, or assignee to the utility or to any agent or contractor of the utility.
4. A crossing fee is not required if the crossing is located within a public right of way.
5. In addition to the standard crossing fee and based on the railroad traffic at the crossing, a utility shall reimburse the railroad for any reasonable and necessary flagging expense associated with a crossing.
6. If the railroad alleges a crossing will cause a diminution in land value in an amount greater than the crossing fee provided in subsection 1, the railroad shall notify the utility and provide a certified appraisal demonstrating the diminution in value of the entire parcel of railroad property caused by the crossing before the date for commencement of construction provided in section 49-09.1-04.
7. If the parties are unable to resolve the issue of compensation under subsection 6, the dispute must be resolved in accordance with section 49-09.1-08.
8. The placement of a single conduit and its content is a single facility. No additional fees are payable based on the individual fibers, wires, lines, or other items contained within the conduit.

#### **49-09.1-06. Certificate of insurance or coverage.**

1. The certificate of insurance or coverage submitted by a municipality must include commercial general liability insurance or equivalent form with a limit of not less than one million dollars for each occurrence and an aggregate of not less than two million dollars.
2. The certificate of insurance or coverage submitted by any other utility other than a gas and hazardous materials pipeline utility must include commercial general liability insurance or an equivalent form with a limit of not less than two million dollars for each occurrence and an aggregate limit of not less than five million dollars.
3. The certificate of insurance submitted by a gas or hazardous materials pipeline utility must include commercial general liability insurance with a combined single limit of a minimum of five million dollars for each occurrence and an aggregate limit of at least ten million dollars.
4. The railroad may require protective liability insurance with a combined single limit of not less than two million dollars for each occurrence and an aggregate limit of not less than five million dollars. The coverage may be provided by a blanket railroad protective liability insurance policy if the coverage, including the coverage limits, applies separately to each individual crossing.
5. The coverage is required only during the period of construction, repair, or replacement of the facility.

6. The insurance obligations required under this section may be satisfied by the utility using any combination of primary, excess, or self insurance.

#### **49-09.1-07. Notice of objection by railroad - Appeal.**

1. If a railroad objects to the proposed crossing due to the proposal being a serious threat to the safe operations of the railroad or to the current use of the railroad right of way, the railroad shall provide notice of the objection and the specific basis of the objection to the utility by registered mail.
2. If the parties are unable to resolve the objection, either party may petition the commission for resolution of the disputed crossing application within thirty days from receipt of the objection.
3. Before filing a petition, the parties shall confer in good faith in an attempt to resolve the objection.
4. If a petition is filed, the commission shall issue a notice of hearing or notice of opportunity for hearing within fifteen days of filing of the petition, and shall issue an order within thirty days after the hearing or, if a hearing is not held, after expiration of the period during which a hearing could be requested, during which time the crossing must be stayed. The order may be appealed in accordance with chapter 28-32. The commission shall assess its costs associated with a petition equitably against the parties. The parties shall pay the costs within thirty days after receipt of a bill for payment from the commission. Amounts collected by the commission under this subsection must be deposited in a special account within the commission.

#### **49-09.1-08. Additional requirements imposed by railroad - Objection and petition to commission.**

1. If, in writing by registered mail, a railroad asserts special circumstances exist, other than the proposed crossing being a serious threat to the safe operations of the railroad or to the current use of the railroad right of way, or imposes additional requirements on a utility for crossing its lines, the utility may object to one or more of the requirements.
2. If a utility objects under subsection 1, the utility shall provide notice of the objection and the specific basis of the objection to the railroad by registered mail.
3. If the parties are unable to resolve the objection, either party may petition the commission for resolution of the objection within thirty days from receipt of the objection.
4. Before filing a petition, the parties shall confer in good faith in an attempt to resolve the objection.
5. If a petition is filed, the commission shall issue a notice of hearing or notice of opportunity for hearing within fifteen days after the filing of the petition, and shall determine, within thirty days after the hearing or, if a hearing is not held, after expiration of the period during which a hearing could be requested, whether special circumstances exist which necessitate additional requirements for the placement of the crossing. The order may be appealed in accordance with chapter 28-32. The commission shall assess its costs associated with a petition equitably against the parties. The parties shall pay

the costs within thirty days after receipt of a bill for payment from the commission. Amounts collected by the commission under this subsection must be deposited in a special account within the commission.

#### **49-09.1-09. Operational relocation.**

1. A railroad may require a utility to relocate a facility if the railroad determines relocation is essential to accommodate railroad operations, and the relocation is not arbitrary or unreasonable. Before agreeing to the relocation, a utility may require a railroad to provide a statement and supporting documentation identifying the operational necessity for requesting the relocation. A utility shall perform the relocation within a reasonable period of time following the agreement.
2. The relocation must be to a location mutually agreed upon by the railroad and utility, within the railroad right of way.
3. Relocation is at the expense of the utility. The crossing fee under section 49-09.1-05 may not be imposed for relocation.

#### **49-09.1-10. Removal of equipment.**

Upon completion of any facility, the utility shall remove, or cause to be removed, all tools, equipment, or other property used in the construction of the facility and, if railroad property was moved or disturbed, restore that property to the condition of the property before being moved or disturbed.

#### **49-09.1-11. Assignment.**

1. A utility may assign or otherwise transfer any rights to cross a railroad right of way to any financially responsible entity controlled by, controlling, or under common control of the utility or to any entity into or with which the utility is merged or consolidated or which acquires ownership or control of all or substantially all of the transmission assets of the utility.
2. Notice of the assignment or transfer must be given to the railroad within thirty days. Any other transfer or assignment may not take place without the written permission of the railroad, which permission may not be unreasonably withheld.

#### **49-09.1-12. Prohibition against mechanic's liens.**

1. A utility may not create, permit, or cause a mechanic's lien or other lien to be created or enforced against the railroad's property for any work performed by the utility in connection with the utility's facilities located in the railroad's right of way.
2. A railroad may not create, permit, or suffer a mechanic's lien or other lien of any kind or any nature to be created or enforced against a utility's property located in the railroad's right of way for any work performed by the railroad in connection with the railroad's facilities.

#### **49-09.1-13. Taxes.**

A utility promptly shall pay or discharge all taxes and charges levied upon the utility's facilities located in the railroad's right of way. If any taxes or charges can not



be separately made or assessed to the utility, but are included in the taxes or charges assessed to the railroad, the utility shall pay to the railroad an equitable portion of the taxes, determined by the value of the utility's facilities located on the railroad right of way as compared with the entire value of the railroad property.

**49-09.1-14. Existing agreements - Eminent domain.**

1. This chapter does not prevent a railroad and a utility from continuing under an existing agreement or otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing.
2. This chapter does not impair the authority of a utility to secure crossing rights by easement pursuant to the exercise of the power of eminent domain.

**SECTION 2. APPLICATION.** This Act applies to any:

1. Crossing existing before August 1, 2019, if an agreement concerning the crossing has expired or is terminated. In such instance, if the collective amount of seven hundred fifty dollars has been paid to the railroad during the existence of the crossing, no additional fees are required; and
2. Crossing commenced after July 31, 2019.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 388

### HOUSE BILL NO. 1255

(Representatives Roers Jones, Beadle, Boschee, Heinert)  
(Senators Elkin, Myrdal, Robinson)

AN ACT to amend and reenact section 49-10.1-05 of the North Dakota Century Code, relating to the powers of railroad police.

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

**SECTION 1. AMENDMENT.** Section 49-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-10.1-05. Railroad police.**

Railroad police officers who are designated by a railroad to be licensed under the laws of this state, while ~~engaged in their~~within the scope of employment with the railroad, have the authority of a "law enforcement officer" as defined under section 12.1-01-04 for the purpose of ~~arresting any person;~~

1. Arresting an individual committing a felony on railroad property or associated with railroad equipment, ~~or to arrest a person;~~
2. Arresting an individual committing a misdemeanor involving railroad property or relating to persons or property being transported by the railroad, or awaiting transportation by the railroad, ~~and may remove;~~
3. Issuing a citation to an individual committing an infraction or noncriminal offense on or relating to railroad property, or to individuals or property being transported by the railroad, or awaiting transportation by the railroad; and
4. Removing an individual from a train who has no right to be there, or who is engaging in a conduct prohibited by title 12.1.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 389

### SENATE BILL NO. 2038

(Legislative Management)  
(Natural Resources Committee)

AN ACT to amend and reenact sections 49-22-03, 49-22-14.1, 49-22-16, 49-22.1-01, 49-22.1-12, and subsection 2 of section 49-22.1-13 of the North Dakota Century Code, relating to energy conversion and transmission facility siting, gas and liquid energy conversion, and gas and liquid transmission facility siting.

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

**SECTION 1. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **49-22-03. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes ~~any~~ clearing of land, excavation, or other action ~~that would affect~~ affecting the environment of the site after April 9, 1975, but does not include activities:
  - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
    - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsections 5 or 12 of this section and the activities are:
      - (a) Within the geographic boundaries of a previously issued certificate or permit;
      - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
      - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
    - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
    - (3) The activities are for the construction:

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- (a) Of a new electric energy conversion facility;
  - (b) Of a new electric transmission facility;
  - (c) To improve the existing electric energy conversion facility or electric transmission facility; or
  - (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
- (4) Before conducting any activities, the utility certifies in writing to the commission that:
- (a) The activities will not affect any known exclusion or avoidance area;
  - (b) The activities are for the construction:
    - [1] Of a new electric energy conversion facility;
    - [2] Of a new electric transmission facility;
    - [3] To improve the existing electric energy conversion or electric transmission facility; or
    - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
  - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission that:
- (a) The activities will not affect any known exclusion area;
  - (b) The activities are for the construction:
    - [1] Of a new electric energy conversion facility;
    - [2] Of a new electric transmission facility;
    - [3] To improve the existing electric energy conversion facility or electric transmission facility; or
    - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
  - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;

- (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
  - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
4. "Corridor" means the area of land in which ~~where~~ a designated route may be established for an electric transmission facility.
  5. "Electric energy conversion facility" means ~~any~~ a plant, addition, or combination of plant and addition, designed for or capable of:
    - a. Generation by wind energy conversion exceeding one-half megawatt of electricity; or
    - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity.
  6. "Electric transmission facility" means an electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission facility" does not include:
    - a. A temporary electric transmission line loop that is:
      - (1) Connected and adjacent to an existing electric transmission facility that was sited under this chapter;
      - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
      - (3) In place for less than one year; or
    - b. An electric transmission line that is less than one mile [1.61 kilometers] long.
  7. "Facility" means an electric energy conversion facility, electric transmission facility, or both.
  8. "Permit" means the permit for the construction of an electric transmission facility within a designated corridor issued under this chapter.
  9. "Person" includes ~~any~~ an individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.

10. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
11. ~~"Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.~~
12. "Route" means the location of an electric transmission facility within a designated corridor.
- ~~13-12.~~ "Site" means the location of an electric energy conversion facility.
- 14-13. "Utility" means ~~any~~ a person engaged in and controlling the electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.

**SECTION 2. AMENDMENT.** Section 49-22-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-14.1. Cooperation with state and federal agencies and ~~political subdivisions.~~**

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein. ~~The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of section 49-22-16.~~

<sup>149</sup> **SECTION 3. AMENDMENT.** Section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.**

1. The issuance of a certificate of site compatibility or a route permit shall, subject to subsections 2 and 3, be the sole site or route approval required to be obtained by the utility.
2. a. A certificate of site compatibility for an electric energy conversion facility may not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and ~~no~~ a site may not be designated which violates local land use, zoning, or building rules, regulations, or ordinances.
  - b. ~~Except as provided in this section, a~~ permit for the construction of a gas or liquid or an electric transmission facility within a designated corridor supersedes and preempts any local land use or zoning regulations, or building rule, regulation, or ordinance, upon a finding by the commission that the rule, regulation, or ordinance, as applied to the proposed route, is

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<sup>149</sup> Section 49-22-16 was also amended by section 6 of House Bill No. 1383, chapter 56.

~~unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of location. Without such a finding by the commission, a route may not be designated which violates a local land use, zoning, or building rule, regulation, or ordinance.~~

- ~~e. Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location, or are in direct conflict with state or federal laws or rules.~~
- ~~d. When an application for a certificate for a gas or liquid transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.~~
- ~~e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.~~
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate electric energy conversion facilities and electric transmission facilities. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission with respect to the site designation for the electric energy conversion facility or the corridor or route designation for the electric transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.
4. ~~No~~A site or route ~~shall~~may not be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position ~~shall~~must clearly state whether the site, corridor, or route being considered for designation will be in compliance with such agency's rules. For purposes of this chapter it ~~shall~~be presumed that a proposed facility will be in compliance with a state agency's rules if ~~such~~the agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

**SECTION 4. AMENDMENT.** Section 49-22.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**49-22.1-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes ~~any~~ any clearing of land, excavation, or other action ~~that would affect~~ affecting the environment of the site after April 9, 1975, but does not include activities:
  - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
    - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in subsection 5 or 12 and the activities are:
      - (a) Within the geographic boundaries of a previously issued certificate or permit;
      - (b) For a gas or liquid energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
      - (c) For a gas or liquid transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
    - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
    - (3) The activities are for the construction:
      - (a) Of a new gas or liquid energy conversion facility;
      - (b) Of a new gas or liquid transmission facility;
      - (c) To improve the existing gas or liquid energy conversion facility, or gas or liquid, transmission facility; or
      - (d) To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
    - (4) Before conducting any activities, the utility certifies in writing to the commission that:
      - (a) The activities will not affect ~~any~~ any known exclusion or avoidance area;
      - (b) The activities are for the construction:
        - [1] Of a new gas or liquid energy conversion facility;
        - [2] Of a new gas or liquid transmission facility;



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- [3] To improve the existing gas or liquid energy conversion or gas or liquid transmission facility; or
  - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
- (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission:
    - (a) The activities will not affect any known exclusion area;
    - (b) The activities are for the construction:
      - [1] Of a new gas or liquid energy conversion facility;
      - [2] Of a new gas or liquid transmission facility;
      - [3] To improve the existing gas or liquid energy conversion facility or gas or liquid facility; or
      - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
    - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
  - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
  - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
4. "Corridor" means the area of land in which ~~where~~ a designated route may be established for a gas or liquid transmission facility.

5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission facility, or both.
6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
  - a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
  - b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - c. Enrichment of uranium minerals.
7. "Gas or liquid transmission facility" means any of the following:
  - a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:
    - (1) An oil or gas pipeline gathering system;
    - (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
    - (3) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.
  - b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
8. "Permit" means the permit for the construction of a gas or liquid transmission facility within a designated corridor issued under this chapter.
9. "Person" includes ~~any~~an individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
10. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
11. "Route" means the location of a gas or liquid transmission facility within a designated corridor.
- 11.12. "Site" means the location of a gas or liquid energy conversion facility.

~~42-13.~~ "Utility" means ~~any~~ a person engaged in and controlling the generation, manufacture, refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon products, including coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any gas or liquid energy conversion facility.

**SECTION 5. AMENDMENT.** Section 49-22.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**49-22.1-12. Cooperation with state and federal agencies and political subdivisions.**

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter. The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of section 49-22.1-13.

**SECTION 6. AMENDMENT.** Subsection 2 of section 49-22.1-13 of the North Dakota Century Code is amended and reenacted as follows:

2. a. A certificate of site compatibility for ana gas or liquid energy conversion facility does may not supersede or preempt any local land use; zoning; or building rules, regulations, or ordinances, and a site may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances. A
- b. Except as provided in this section, a permit for the construction of a gas or liquid transmission facility within a designated corridor may supersede supersedes and preempt preempts any local land use; or zoning; or building rules, regulations, or ordinances, upon a finding by the commission that the rules, regulations, or ordinances, as applied to the proposed route,
- c. Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location. Without that finding by the commission, a route may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances, or are in direct conflict with state or federal laws or rules.
- d. When an application for a certificate for a gas or liquid transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The

requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.

- e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 390

### SENATE BILL NO. 2261

(Senators Unruh, Cook, Wardner)  
(Representatives Keiser, Lefor, Schmidt)

AN ACT to amend and reenact subsection 5 of section 49-22-08 of the North Dakota Century Code, relating to conditions imposed on the designation of sites, corridors, and routes.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 49-22-08 of the North Dakota Century Code is amended and reenacted as follows:

5. The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section shall not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with such terms, conditions, or modifications deemed necessary. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.

Approved April 23, 2019

Filed April 24, 2019

# PUBLIC WELFARE

## CHAPTER 391

### SENATE BILL NO. 2124

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact five new sections to chapter 50-01.1 and chapter 50-35 of the North Dakota Century Code, relating to creation of human service zones; to amend and reenact sections 11-16-01 and 11-23-01, subdivision c of subsection 1 of section 14-02.1-02.1, sections 14-08.1-01, 14-09-06.3, 14-09-06.4, 14-09-12, 14-09-19, 14-10-05, and 14-15-01, subdivision i of subsection 1 of section 14-15-09, sections 14-15-11, 14-15-12, and 14-15-12.1, subsection 3 of section 14-15-13, sections 23-06-03, 23-41-01, 23-41-06, 25-04-08.1, and 25-04-11, subsection 2 of section 25-04-16, sections 26.1-45-13, 27-20-02, 27-20-11, 27-20-20.1, 27-20-30, and 27-20-30.1, subsection 2 of section 27-20-31, sections 27-20-38, 27-20-44, 27-20-45, 27-20-47, 27-20-49, and 27-20-54, subsection 2 of section 27-21-12, section 30-16-04, subsection 1 of section 30.1-26-01, subsection 3 of section 30.1-28-11, subdivision h of subsection 1 of section 40-01.1-04, sections 50-01-01, 50-01-01.1, 50-01-02, 50-01-04, 50-01-13, 50-01-17, 50-01-17.1, 50-01-17.2, 50-01-17.3, 50-01-17.5, 50-01-19, 50-01-21, 50-01-26, 50-01-27, 50-01-28, 50-01-29, 50-01.1-01, 50-01.1-02, 50-01.1-03, 50-01.1-04, 50-01.2-00.1, 50-01.2-01, 50-01.2-02, 50-01.2-03, 50-01.2-03.2, 50-01.2-04, and 50-01.2-05, subsection 4 of section 50-06-01, sections 50-06-01.4, 50-06-01.9, and 50-06-05.1, subsection 3 of section 50-06-05.3, sections 50-06-05.8, 50-06-06.2, 50-06-06.5, 50-06-06.14, 50-06-12, 50-06-20, 50-06.2-01, 50-06.2-02, 50-06.2-03, 50-06.2-04, 50-06.2-06, 50-09-01, 50-09-02, 50-09-02.2, 50-09-03, 50-09-04, 50-09-06, 50-09-07, and 50-09-08, subsections 2, 3, and 4 of section 50-09-08.2, sections 50-09-08.3, 50-09-08.4, and 50-09-09, subsection 1 of section 50-09-14, sections 50-09-29 and 50-09-30, subsection 2 of section 50-11-00.1, sections 50-11.1-02, 50-11.2-01, 50-11.2-02, 50-24.1-03.1, 50-24.1-03.2, and 50-24.5-01, subsection 1 of section 50-24.5-02, sections 50-24.5-03, 50-24.5-07, 50-24.5-09, and 50-24.7-01, subsection 1 of section 50-24.7-02, sections 50-24.7-03 and 50-24.7-06, subsections 6 and 11 of section 50-25.1-02, sections 50-25.1-04.3, 50-25.2-14, 50-29-01, 50-29-02, 50-29-03, and 54-46-13, subsection 3 of section 57-15-01.1, sections 57-15-06.7 and 57-20-07.1, subsection 3 of section 57-20-07.3, subdivision b of subsection 1 of section 57-55-10, and subsection 16 of section 65-01-02 of the North Dakota Century Code, relating to the establishment and operation of human service zone areas, taxing district levy limitations, and property tax statements; to repeal sections 50-01-03, 50-01.1-02.1, 50-01.2-03.1, and 50-01.2-06, chapter 50-03, and sections 50-06-05.7, 50-06-06.1, 50-06-20.1, 50-06.2-05, and 50-25.1-06.1 of the North Dakota Century Code, relating to administration of county social service boards, the county human services fund, and caseload standards; to provide for a report; to provide a penalty; to provide a contingent appropriation; to provide for the transfer of employees; to provide an effective date; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 11-16-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-16-01. Duties of the state's attorney.**

The state's attorney is the public prosecutor, and shall:

1. Attend the district court and conduct on behalf of the state all prosecutions for public offenses.
2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when the state's attorney has information that such offenses have been committed, and for that purpose, when the state's attorney is not engaged in criminal proceedings in the district court, the state's attorney shall attend upon the magistrates in cases of arrests when required by them except in cases of assault and battery and petit larceny.
3. Attend before, and give advice to, the grand jury whenever cases are presented to it for consideration.
4. Draw all indictments and informations.
5. Defend all suits brought against the state or against the county.
6. Prosecute all bonds forfeited in the courts of record of the county and prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or to the county.
7. Deliver duplicate receipts for money or property received in the state's attorney's official capacity and file copies thereof with the county auditor.
8. On the first Monday of January, April, July, and October in each year, file with the county auditor an account, verified by the state's attorney's oath, of all money received by the state's attorney in an official capacity in the preceding three months, and at the same time, pay it over to the county treasurer.
9. Give, when required and without fee, the state's attorney's opinion in writing to the county, district, township, and school district officers on matters relating to the duties of their respective offices.
10. Keep a register of all official business in which must be entered a note of each action, whether civil or criminal, prosecuted officially, and of the proceedings therein.
11. Repealed by S.L. 1945, ch. 161, § 1.
- ~~12.~~ Act as legal adviser of the board of county commissioners, attend the meetings thereof when required, and oppose all claims and actions presented against the county which are unjust or illegal.
- ~~13.~~12. Institute an action in the name of the county to recover any money paid upon the order of the board of county commissioners without authority of law as salary, fee, or for any other purpose, or any money paid on a warrant drawn

by any officer to that officer's own order or in favor of any other person without authorization by the board of county commissioners or by law.

- 44-13. Institute an action in the name of the county to restrain the payment of any money described in any order or warrant of the kind described in subsection 13 when the state's attorney secures knowledge of such order or warrant before the money is paid thereon.
- 45-14. Assist the district court in behalf of the recipient of payments for child support or spousal support combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments.
- 46-15. Institute proceedings under chapter 25-03.1 if there is probable cause to believe that the subject of a petition for involuntary commitment is a person requiring treatment.
16. Institute and defend proceedings under sections 14-09-12 and 14-09-19 and chapters 14-15, 27-20, and 50-01 upon consultation with the human service zone director or the executive director of the department of human services.
17. Act as the legal advisor and represent a human service zone as set forth in a plan approved under section 50-01.1-03. The state's attorney within the human service zone, by way of agreement, shall designate a singular state's attorney's office, within or outside the human service zone, to act as legal advisor of the human service zone. The host county state's attorney shall serve as the legal advisor if no agreement is reached. The agreement may not limit a state's attorney's individual discretion in court filings and representation.
18. Act as the legal advisor and represent the human service zone regarding employer actions, including grievances and appeals, taken against the human service zone team member. The state's attorney of the county by which the human service zone team member is employed shall act as the legal advisor of the human service zone, unless a different agreement is established by the affected state's attorney.

The state's attorney shall not require any order of the board of county commissioners to institute an action under subsection ~~13 or 14~~ 12 or 13.

**SECTION 2. AMENDMENT.** Section 11-23-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-23-01. Officers required to furnish commissioners with departmental budget. (Effective through ~~July~~December 31, 2019)**

Every officer in charge of any institution, office, or undertaking supported wholly or in part by the county shall file with the board of county commissioners a departmental budget that is prescribed by the state auditor. The departmental budget must include an itemized statement of the estimated amount of money that will be required for the maintenance, operation, or improvement of the institution, office, or undertaking for the ensuing year. The board of county commissioners may require additional information to clarify the departmental budget.

**Officers required to furnish commissioners with departmental budget. (Effective after ~~July~~December 31, 2019)**



1. Every officer in charge of any institution, office, or undertaking supported wholly or in part by the county shall file with the board of county commissioners a departmental budget that is prescribed by the state auditor. The departmental budget must include an itemized statement of the estimated amount of money that will be required for the maintenance, operation, or improvement of the institution, office, or undertaking for the ensuing year. The board of county commissioners may require additional information to clarify the departmental budget.
2. a. ~~The departmental budget submitted by the county social~~human ~~service board in 2019 for the 2020 budget~~zone may not exceed an amount determined using the departmental budget submitted in 2016 by the county social service board as a starting point, subtracting the reduction in the county's social service funding responsibility for 2016 derived from transferring the county social service costs identified in this subdivision from the county social service board to the department of human services, and applying to the resulting amount the percentage salary and benefits increase provided by legislative appropriations for state employees for taxable year 2019. For purposes of this subdivision, the reduction in the county's social service funding responsibility derived from transferring the county social service costs identified in this subdivision from the county social service board to the department of human services includes the following:
  - (1) Foster care and subsidized adoption costs that would have been paid by the county after December 31, 2015;
  - (2) The county's share of grant costs for medical assistance in the form of payments for care furnished to recipients of therapeutic foster care services which would have been paid by the county after December 31, 2015;
  - (3) The county's share of the costs for service payments to the elderly and disabled which would have been paid by the county after December 15, 2015;
  - (4) The county's share of salary and benefits for family preservation services pursuant to section 50-06-05.8 which would have been paid by the county after December 31, 2015;
  - (5) The county's share of the cost of the electronic benefits transfers for the supplemental nutrition assistance program which would have been paid by the county after December 31, 2015; and
  - (6) The computer processing costs which would have been paid by the county after December 31, 2015, which exceed the 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 by the department of human services and the human service zone director pursuant to section 50-35-04 and must include the county's cost allocation of indirect costs based on a formula established by the department of human services.

- b. ~~The county share of the human service budget zone's indirect costs must be funded entirely from the county's property tax levy for that purpose and the county may not use funds from any other source to supplement the human services budget, with the exception that the county may make use of the identifiable amount of other sources the county has used to supplement its human services budget for 2015 and the county may use grant funds that may be available to the county under section 50-06-20.1 general fund.~~
- c. ~~The department of human services shall develop a process to review a request from a county social human service board zone for any proposed increase in staff needed as a result of significantly increased caseloads for state-funded human services programs, if the increase in staff would result in the county exceeding the budget limitation established under this subsection. As part of its review process, the department of human services shall review countywide pertinent factors, which may include caseload information and consider the option of multicounty sharing of staff. If the department of human services approves a request for a proposed increase in staff, the county human service zone budget limitation established under subdivision b may be increased by the amount determined necessary by the department of human services to fund the approved additional staff. The human service zone director shall submit the proposed increase in staff to the human service zone board for review. The human service zone director shall work with the department to achieve equitable compensation and salary increases for all human service zone team members within the human service zone. The human service zone director shall notify appropriate host county staff of all staffing changes for administrative purposes.~~
3. For purposes of this section, "host county" means the county within the human service zone in which the human service zone administrative office is located and in which the human service zone team members are employed.

<sup>150</sup> **SECTION 3. AMENDMENT.** Subdivision c of subsection 1 of section 14-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- c. ~~Materials that include information on the support obligations of the father of a child who is born alive, including the father's legal duty to support his child, which may include child support payments and health insurance, and the fact that paternity may be established by the father's signature on an acknowledgment of paternity or by court action. The printed material must also state that more information concerning paternity establishment and child support services and enforcement may be obtained by calling state public assistance agencies or county public assistance agencies human service zones.~~

**SECTION 4. AMENDMENT.** Section 14-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**14-08.1-01. Liability for support.**

A person legally responsible for the support of a child under the age of eighteen years who is not subject to any subsisting court order for the support of the child and

<sup>150</sup> Section 14-02.1-02.1 was also amended by section 2 of House Bill No. 1336, chapter 125.

who fails to provide support, subsistence, education, or other necessary care for the child, regardless of whether the child is not or was not in destitute circumstances, is liable for the reasonable value of physical and custodial care or support which has been furnished to the child by any person, institution, agency, or ~~county social~~ human service board ~~zone~~. Any payment of public assistance money made to or for the benefit of any dependent child creates a presumption that such payment equals the reasonable value of physical and custodial care or support.

**SECTION 5. AMENDMENT.** Section 14-09-06.3 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.3. Custody investigations and reports - Costs.**

1. In contested proceedings dealing with parental rights and responsibilities the court, upon the request of either party, or, upon its own motion, may order an investigation and report concerning parenting rights and responsibilities regarding the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the ~~county social~~ human service board ~~zone~~, public health officer, school officials, and any other public agency or private practitioner ~~if the court~~ deems qualified to make the investigation.
2. The investigator may consult any person who may have information about the child and any potential arrangements for parenting rights and responsibilities, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the investigator and any person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the party's right of cross-examination before the hearing.
4. The court shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses must be borne by the ~~county~~ human service zone where the child resided at the time the action was commenced or if a modification of parental rights and responsibilities, at the time the motion to modify is served.

**SECTION 6. 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 investigator for child in proceedings involving parental rights and responsibilities - Immunity.**

In any action for an annulment, divorce, legal separation, or other action affecting marriage, when either party has reason for special concern as to the future of the minor child, and in any action when the parenting rights and responsibilities concerning the child is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the child concerning parenting rights and responsibilities. The court may appoint a guardian ad litem or investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the child's best interests. If appointed, the 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 investigator fee established by the court. If neither party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the ~~county~~human service zone where the child resided at the time the action was commenced. The court may direct either or both parties to reimburse the ~~county~~human service zone, in whole or in part, for such payment. Any guardian ad litem or 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 investigator is a disputable presumption.

**SECTION 7. AMENDMENT.** Section 14-09-12 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-12. Support by county - Liability of parent's estate.**

If a parent chargeable with the support of a child dies leaving it chargeable upon the ~~county~~human service zone and leaving an estate sufficient for its support, the ~~board of county commissioners of the county~~department of human services, in the name of the ~~county~~human service zone, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate and against the heirs, devisees, and next of kin of the parent.

**SECTION 8. AMENDMENT.** Section 14-09-19 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-19. Parental abuse.**

The abuse of parental authority is the subject of judicial cognizance in a civil action in the district court brought by the child, or by its relatives of the child within the third degree, or by the ~~county social~~human service boardzone of the county where the child resides, and when the abuse is established the child may be freed from the dominion of the parent and the duty of support and education may be enforced.

**SECTION 9. AMENDMENT.** Section 14-10-05 of the North Dakota Century Code is amended and reenacted as follows:

**14-10-05. Assignment of children prohibited - Penalty.**

No person, other than the parents, may assume the permanent care and custody of a child, unless authorized so to do by an order or decree of a court having jurisdiction, except that a parent, upon giving written notice to the department of human services and human service zone, may place that person's own child in the home of the child's grandparent, uncle, or aunt for adoption or guardianship by the person receiving the child. The child must be considered abandoned if proceedings for the adoption or guardianship of the child are not initiated by such relative within one year following the date of notice of placement. No parent may assign or otherwise transfer the parent's rights or duties with respect to the care and custody of the parent's child. Any such transfer or assignment, written or otherwise, is void. This section does not affect the right of the parent to consent in writing to the legal adoption of the parent's child, but such written consent does not operate to transfer any right in the child in the absence of a decree by a court having jurisdiction. Any person who violates the provisions of this section is guilty of a class A misdemeanor.

**SECTION 10. AMENDMENT.** Section 14-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Abandon" means:
  - a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause to:
    - (1) Communicate with the child; or
    - (2) Provide for the care and support of the child as required by law.
  - b. As to a parent of a child in that parent's custody:
    - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
    - (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
    - (3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Adult" means an individual who is not a minor.
3. "Agency" means an entity licensed under chapter 50-12 to place minors for adoption.
4. "Child" means a son or daughter, whether by birth or adoption.
5. "Court" means the district court of this state, and when the context requires means the court of any other state empowered to grant petitions for adoption.
6. "Department" means the department of human services.
7. "Genetic parent" means the biological mother or adjudicated mother of the adopted child, or the presumed father or adjudicated father of the adopted child under chapter 14-20.
8. "Genetic sibling" means individuals with genetic relationship of sister, brother, half-sister, or half-brother.
9. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
10. "Identifying" includes full name, address, date of birth, telephone number, or anything that may lead to the identity of any previously undisclosed individual.
- ~~10-11.~~ "Investigation" includes information obtained regarding the child's history, a preplacement adoption assessment of the prospective adoptive family, and an evaluation of the child's placement in the adoptive home.

14-12. "Minor" means an individual under the age of eighteen years.

14-13. "Nonidentifying adoptive information" means:

- a. Age of genetic parent in years at the birth of the adopted child.
- b. Heritage of genetic parent.
- c. Educational attainments, including the number of years of school completed by genetic parent at the time of birth of the adopted child.
- d. General physical appearance of genetic parent at the time of birth of the adopted child, including the height, weight, color of hair, eyes, skin, and other information of a similar nature.
- e. Talents, hobbies, and special interests of genetic parents.
- f. Existence of any other children born to either genetic parent.
- g. Reasons for child being placed for adoption or for termination of parental right.
- h. Religion of genetic parent.
- i. Vocation of genetic parent in general terms.
- j. Health history of genetic parents and blood relatives in a manner prescribed by the department.
- k. Such further information which, in the judgment of the agency, will not be detrimental to the adoptive parent or the adopted individual requesting the information, but the additional information may not identify genetic parents by name or location.

14-14. "Relative" means any individual having the following relationship to the minor by marriage, blood, or adoption: brother, sister, stepbrother, stepsister, first cousin, uncle, aunt, or grandparent.

14-15. "Stepparent" means an individual who is married to a parent of a child who has not adopted the child.

**SECTION 11. AMENDMENT.** Subdivision i of subsection 1 of section 14-15-09 of the North Dakota Century Code is amended and reenacted as follows:

- i. The department ~~or~~ and a county ~~social~~ human service ~~board~~ zone as ~~respondent~~ respondents.

**SECTION 12. AMENDMENT.** Section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-11. Notice of petition - Investigation and hearing.**

1. a. After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing must be given by the petitioner to the department and human

service zone; any agency or individual whose consent to the adoption is required by this chapter but who has not consented; an individual whose consent is dispensed with upon any ground mentioned in subdivisions a, b, f, h, i, and j of subsection 1 of section 14-15-06 but who has not consented; and any individual identified by the court as a biological parent or a possible biological parent of the minor, upon making inquiry to the extent necessary and appropriate, as in proceedings under section 27-20-45, unless the individual has relinquished parental rights or the individual's parental rights have been previously terminated by a court. The notice to the department and human service zone must be accompanied by a copy of the petition.

- b. Notice of the filing of a petition to adopt an adult must be given by the petitioner at least twenty days before the date of the hearing to each living parent of the adult to be adopted.
2. An investigation must be made by a licensed child-placing agency to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor.
3. A written report of the investigation must be filed with the court by the investigator before the petition is heard.
4. The report of the investigation must contain a review of the child's history; a preplacement adoption assessment of the petitioner, including a criminal history record investigation of the petitioner; and a postplacement evaluation of the placement with a recommendation as to the granting of the petition for adoption and any other information the court requires regarding the petitioner or the minor.
5. An investigation and report is not required in cases in which a stepparent is the petitioner or the individual to be adopted is an adult. The department and human service zone, when required to consent to the adoption, may give consent without making the investigation. If the petitioner is a relative other than a stepparent of the minor, the minor has lived with the petitioner for at least nine months, no allegations of abuse or neglect have been filed against the petitioner or any member of the petitioner's household, and the court is satisfied that the proposed adoptive home is appropriate for the minor, the court may waive the investigation and report required under this section.
6. The department and human service zone, when required to consent to the adoption, may request the licensed child-placing agency to conduct further investigation and to make a written report thereof as a supplemental report to the court.
7. After the filing of a petition to adopt an adult, the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any individual whose consent to the adoption is required but who has not consented and to each living parent of the adult to be adopted. The court may order an appropriate investigation to assist it in determining whether the adoption is in the best interest of the individuals involved.

8. Notice must be given in the manner appropriate under the North Dakota Rules of Civil Procedure for the service of process in a civil action in this state or in any manner the court by order directs. Proof of the giving of the notice must be filed with the court before the petition is heard.

**SECTION 13. AMENDMENT.** Section 14-15-12 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-12. Required residence of minor.**

1. A final decree of adoption may not be issued and an interlocutory decree of adoption does not become final, until the minor to be adopted, other than a stepchild of the petitioner, has lived in the adoptive home:
  - a. For at least six months after placement by an agency;
  - b. For six months after placement by a parent in accordance with an identified relinquishment under chapter 14-15.1;
  - c. As a foster child for at least six months and has been placed for adoption by an agency; or
  - d. For at least six months after the department and human service zone or the court has been informed of the custody of the minor by the petitioner, and the department and human service zone or the court has had an opportunity to observe or investigate the adoptive home.
2. If a child who has been placed for adoption dies before the six-month residency requirement of subsection 1 is met, the court may grant the final decree of adoption upon a finding that a proper and legitimate reason exists for granting the final decree.

**SECTION 14. AMENDMENT.** Section 14-15-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-12.1. Health insurance requirements for adoptees.**

The department or child-placing agency involved in an adoption action may at any time before a final decree of adoption, if legal custody of the individual to be adopted is not held by the department, a county social service board, a child-placing agency, or an equivalent office or agency outside the state, require the petitioner for the adoption of another individual to show proof that a health insurance policy is in effect which provides coverage for the individual to be adopted. If proof of health insurance coverage is submitted by the petitioner, no further bond of any kind may be required by the department or a county social service board in regard to health coverage of the individual to be adopted.

**SECTION 15. AMENDMENT.** Section 14-15-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-12.1. Health insurance requirements for adoptees.**

The department or child-placing agency involved in an adoption action may at any time before a final decree of adoption, if legal custody of the individual to be adopted is not held by the department, a county social service board, human service zone, a child-placing agency, or an equivalent office or agency outside the state, require the petitioner for the adoption of another individual to show proof that a health insurance



policy is in effect which provides coverage for the individual to be adopted. If proof of health insurance coverage is submitted by the petitioner, no further bond of any kind may be required by the department or a ~~county social~~ human service board ~~zone~~ in regard to health coverage of the individual to be adopted.

**SECTION 16. AMENDMENT.** Subsection 3 of section 14-15-13 of the North Dakota Century Code is amended and reenacted as follows:

3. If at the conclusion of the hearing, the court determines that the required consents have been obtained and that the adoption is in the best interest of the individual to be adopted, the court may:
  - a. Issue a final decree of adoption; or
  - b. Issue an interlocutory decree of adoption which by its own terms automatically becomes a final decree of adoption on a day specified in the decree, that day may not be less than six months nor more than one year after the minor was placed in the adoptive home by an agency or after the department and human service zone or the court was informed of the custody of the minor by the petitioner, unless sooner vacated by the court for good cause shown. In an interlocutory decree of adoption, the court shall provide for observation, investigation, and further report on the adoptive home during the interlocutory period.

<sup>151</sup> **SECTION 17. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-06-03. Duty of final disposition - Indigent burial - Decedent's instructions.**

1. The duty of disposition of the body of a deceased individual devolves upon the following individual in the order of priority:
  - a. Any legally competent adult given the duty of final disposition by the deceased individual in a statement conforming with section 23-06-31, except the legally competent adult specified in the statement conforming with section 23-06-31 may decline the duty of final disposition unless the individual would otherwise have the duty of final disposition under this section;
  - b. The surviving spouse if the deceased was married;
  - c. If the deceased was not married but left kindred, upon the majority of the adult children of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the child who represents to be the sole surviving child or the children who represent to constitute a majority of the surviving children;
  - d. The surviving parent or parents of the decedent, each having equal authority;
  - e. The adult sibling or the majority of the adult siblings of the decedent; however, in the absence of actual knowledge to the contrary, a funeral

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<sup>151</sup> Section 23-06-03 was also amended by section 1 of Senate Bill No. 2208, chapter 207.

- director or mortician may rely on instructions given by the sibling who represents to be the sole surviving sibling or the siblings who represent to constitute a majority of the surviving siblings;
- f. The adult grandchild or the majority of the adult grandchildren of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a grandchild who represents to be the only grandchild reasonably available to control final disposition of the decedent's remains or the grandchildren who represent to constitute a majority of grandchildren reasonably available to control final disposition of the decedent's remains;
  - g. The grandparent or the grandparents of the decedent, each having equal authority;
  - h. The adult nieces and nephews of the decedent or a majority of the adult nieces and nephews; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a niece or nephew, who represents to be the only niece or nephew reasonably available to control final disposition of the decedent's remains or the nieces and nephews who represent to constitute a majority of the nieces and nephews reasonably available to control final disposition of the decedent's remains;
  - i. An individual who was acting as the guardian of the decedent with authority to make health care decisions for the decedent at the time of death;
  - j. An adult who exhibited special care and concern for the decedent;
  - k. An individual respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; or
  - l. The appropriate public or court authority, as required by law. For purposes of this subdivision, the appropriate public or court authority includes the ~~county social~~ human service ~~board~~ zone of the county in which the death occurred if the individual dies without apparent financial means to provide for final disposition or the district court in the county in which the death occurred.
2. If there is only one individual in a degree of relationship to the decedent described in subsection 1, and a district court determines the person and the decedent were estranged at the time of death, the right to control and the duty of disposition devolves to the next degree of relationship under subsection 1. For purposes of this subsection, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.
  3. If an individual to whom the right to control and duty of disposition devolves under subsection 1, refuses to accept or declines to act upon the right or duty, that right and duty passes as follows:
    - a. To another individual with the same degree of relationship to the decedent as the individual refusing to accept or declining to act; or

- b. To the individual in the next degree of relationship to the decedent under subsection 1.
4. If a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the mortician or funeral director may file a petition in the district court in the county of residence of the decedent requesting the court make a determination in the matter. If the right to control and duty of disposition devolves to more than one individual with the same degree of relationship to the decedent and those individuals do not, by majority vote, make a decision regarding arrangements and final disposition and a district court has been petitioned to make a determination, the court shall consider the following factors in making a determination:
  - a. The reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;
  - b. The degree of the personal relationship between the decedent and each of the individuals in the same degree of relationship to the decedent;
  - c. The expressed wishes and directions of the decedent and the extent to which the decedent provided resources for the purpose of carrying out the wishes or directions; and
  - d. The degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.
5. If the individual who has the duty of final disposition does not arrange for final disposition of the body within the time required by this chapter, the individual next specified shall bury or otherwise dispose of the body within the requirements of this chapter.
6. a. If the deceased did not leave sufficient means to pay for expenses of final disposition, including the cost of a casket, and is not survived by an individual described by subsection 1 and identified for financial responsibility within the ~~county's human service zone's~~ general assistance policy, within fifteen days of application for services the ~~county social human service board zone~~ of the county in which the deceased had residence for ~~county~~ general assistance purposes or, if residence cannot be established, within fifteen days of application for assistance the ~~county social human service board zone~~ of the county in which the death occurs shall employ a person to arrange for and supervise the final disposition. If the deceased was a resident or inmate of a public institution, within fifteen days of application for assistance the ~~county human service zone~~ 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 final disposition.
  - b. ~~Each board of county commissioners~~The department of human services 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.

- c. ~~The county social services board~~department of human services may provide for the use of a military casket or urn, if the deceased was a veteran as defined in section 37-01-40, unless the additional cost exceeds the negotiated expenses of this section or a surviving spouse or the nearest of kin of the deceased elects a nonmilitary casket.
- d. ~~The county social~~human service board~~zone~~ shall pay the charge for funeral expenses as negotiated by the ~~board of county commissioners~~department of human services. ~~The county social~~human service board~~zone~~ may not decrease the ~~county~~human service zone payment due to a nominal amount left by the deceased or contributed by kin or any other party to defray the expenses of burial or cremation. Funds adequate to allow for burial instead of cremation are considered nominal under this section.
7. If the individual with the duty of final disposition under this section, or the personal representative of the decedent's estate, if any, is aware of the decedent's instructions regarding the disposition of the remains, that person shall honor those instructions, to the extent reasonable and possible, to the extent the instructions do not impose an economic or emotional hardship. A decedent's instructions may be reflected in a variety of methods, including pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract, a health care directive, a durable power of attorney for health care, a power of attorney, a will, a document created under section 23-06-31, or a document of gift for an anatomical gift.
8. If the decedent died while serving in any branch of the United States armed forces, the United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481 section (a)(1) through (8) as effective through December 2001, and completed a United States department of defense record of emergency data, DD form 93, or its successor form or its equivalent branch's form, the duty to bury or cremate the decedent or to provide other funeral and disposition arrangements for the decedent devolves on the person authorized by the decedent pursuant to that form.

**SECTION 18. AMENDMENT.** Section 23-41-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-41-01. Definitions.**

In this chapter unless the context or subject matter otherwise requires:

1. ~~"County agency" means the county social service boards in this state.~~
2. "Department" means the state department of health.
2. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department of human services.
3. "Human services" means:
  - a. A service or assistance provided to an individual or an individual's family in need of services or assistance, including child welfare services, economic assistance programs, medical service programs, and aging service programs, to assist the individual or the individual's family in achieving and

maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing.

- b. A service or assistance provided, administered, or supervised by the department of human services in accordance with chapter 50-06.
- c. Licensing duties as administered or supervised by the department of human services or delegated by the department of human services to a human service zone.

**SECTION 19. AMENDMENT.** Section 23-41-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-41-06. Duties of ~~county agencies~~human service zones.**

A ~~county agency~~human service zone shall:

1. Cooperate with the department in administering this chapter in its ~~county~~human service zone, subject to rules adopted by the ~~department~~state health council.
2. Make surveys and reports regarding children with special health care needs in the various counties to the department when the department directs and in the way the department directs.
3. Provide for the transportation of a child with special health care needs to a clinic for medical examination and to a hospital or a clinic for treatment.

**SECTION 20. AMENDMENT.** Section 25-04-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-08.1. Notification ~~prior to~~before discharge.**

~~Prior to~~Before discharge the superintendent shall consult with the parent or guardian of the person to be discharged, or with the court ~~which~~that ordered the commitment, and shall notify the director of the county social service board ~~or~~human service zone of the county ~~wherein~~in which it is proposed that such person will assume residence and also shall notify the executive director of the department of human services.

**SECTION 21. AMENDMENT.** Section 25-04-11 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-11. Disposition of person who is not a legal resident.**

If a person who has no legal residence in this state is subject to admission to the life skills and transition center or other appropriate state facility, by order of a court of competent jurisdiction, such person must be sent, at the expense of the county ~~or~~human service zone, to the life skills and transition center in the same manner as a resident of this state who is found to be in need of services offered at the life skills and transition center, and the superintendent of the life skills and transition center shall then arrange for the transportation of such person to the place where the person belongs. The department of human services shall ascertain the place where such person belongs when the same conveniently can be done.

**SECTION 22. AMENDMENT.** Subsection 2 of section 25-04-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receipt of such application, the supervising department shall direct the ~~county social~~human service board~~zone~~ of the county from which the patient was admitted to determine whether the application is complete and supported by the required proofs. The supervising department shall approve, reject, or amend the determination made by the ~~county social~~human service board~~zone~~. The determination made by the supervising department may be appealed to the district court of the county of residence of the patient.

**SECTION 23. AMENDMENT.** Section 26.1-45-13 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-45-13. Qualified service providers.**

Any insurance company providing long-term care coverage for home and community-based services shall pay a provider meeting qualified service provider standards a daily payment allowance as defined in the policy or certificate. "Qualified service provider" means a ~~county agency~~human service zone or independent contractor that agrees to meet standards for personal attendant care service as established by the department of human services.

<sup>152</sup> **SECTION 24. AMENDMENT.** Section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-02. Definitions.**

As used in this chapter:

1. "Abandon" means:
  - a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
    - (1) To communicate with the child; or
    - (2) To provide for the care and support of the child as required by law; or
  - b. As to a parent of a child in that parent's custody:
    - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
    - (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
    - (3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.
3. "Aggravated circumstances" means circumstances in which a parent:

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<sup>152</sup> Section 27-20-02 was also amended by section 1 of Senate Bill No. 2073, chapter 264.

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- 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, 12.1-16-03, or 14-09-22 in which the victim is another child of the parent;
    - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or
    - (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury;
  - e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim;
  - f. Has been incarcerated under a sentence for which the latest release date is:
    - (1) In the case of a child age nine or older, after the child's majority; or
    - (2) In the case of a child, after the child is twice the child's current age, measured in days;
  - g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or
  - h. Allows the child to be present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.
4. "Child" means an individual who is:
- a. Under the age of eighteen years and is not married; 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 4921.
7. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.
8. "Deprived child" means a child who:
  - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
  - b. Has been placed for care or adoption in violation of law;
  - c. Has been abandoned by the child's parents, guardian, or other custodian;
  - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
  - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
  - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
  - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.
  - h. Is a victim of human trafficking as defined in title 12.1.
9. "Detention" means a physically secure facility with locked doors and does not include shelter care, attendant care, or home detention.
10. "Director" means the director of juvenile court or the director's designee.
11. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chapter 50-11.3, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.



12. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
13. "Host county" means the county within the human service zone in which the human service zone administrative office is located and in which the human service zone team members are employed.
14. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
15. "Juvenile court" means the district court of this state.
- 44-16. "Juvenile drug court" means a program established in a judicial district consisting of intervention and assessment of juveniles involved in forms of substance abuse; frequent drug testing; intense judicial and probation supervision; individual, group, and family counseling; substance abuse treatment; educational opportunities; and use of sanctions and incentives.
- 45-17. "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. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that the joint placement would be contrary to the safety or well-being of any of the siblings;
  - e. Whether and, if applicable, in the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is determined to be contrary to the safety or well-being of any of the siblings;
  - f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child, aged sixteen or older, will be placed in another planned permanent living arrangement. The court shall:
    - (1) Ask the child whether the child has a desired permanency outcome of another planned permanent living arrangement,
    - (2) Make a judicial determination explaining why another planned permanent living arrangement is the best permanency plan for the child, and

(3) Identify the compelling reasons it continues not to be in the best interest of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative;

- g. 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 out-of-state placements have been considered. If the child is currently in an out-of-state placement, the court shall determine whether the placement continues to be appropriate and in the child's best interests; and
- h. In the case of a child who has attained age fourteen, the services needed to assist the child to make the transition to successful adulthood.

46-18. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.

47-19. "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.

48-20. "Shelter care" means temporary care of a child in physically unrestricted facilities.

49-21. "Unruly child" means a child who:

- a. Is habitually and without justification truant from school;
- b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
- c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;
- d. Has committed an offense in violation of section 5-01-08; or
- e. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco, tobacco-related products, electronic smoking devices, or alternative nicotine products in violation of subsection 2 of section 12.1-31-03; and

f. In any of the foregoing instances is in need of treatment or rehabilitation.

As used in this subsection, "electronic smoking devices" and "alternative nicotine products" have the same meaning as in section 12.1-31-03.

~~20-22.~~ "Willfully" has the meaning provided in section 12.1-02-02.

**SECTION 25. AMENDMENT.** Section 27-20-11 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-11. Venue.**

A proceeding under this chapter may be commenced in the county in which the child resides. A proceeding under section 27-20-30.1 must be commenced in the administrative county within the administrative human service zone, as determined by the department of human services. If delinquent or unruly conduct is alleged, the proceeding may be commenced in the county in which the acts constituting the alleged delinquent or unruly conduct occurred. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced, the county in which the child has resided the majority of the thirty days prior to the date of the alleged deprivation, or the county where the alleged deprivation has occurred. The court shall determine the appropriate venue for a deprivation action based upon the best interests of the child.

**SECTION 26. AMENDMENT.** Section 27-20-20.1 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-20.1. Petition to terminate parental rights - When brought - Definitions.**

1. A petition to terminate parental rights may be made as provided under this section and section 27-20-45.
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 county social service board, 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 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.
3. A petition for termination of parental rights need not be filed if:
  - a. The child is being cared for by a relative approved by the department in collaboration with the county social service board;
  - b. The department or county social service board has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interests and has notified the court that the documentation is available for review by the court; or
  - c. The department or county social service board has determined:
    - (1) Reasonable efforts to preserve and reunify the family are required under section 27-20-32.2 to be made with respect to the child;
    - (2) The case plan provides such services are necessary for the safe return of the child to the child's home; and
    - (3) Such services have not been provided consistent with time periods described in the case plan.
4. For purposes of subsection 2, a child in foster care entered foster care on the earlier of:
  - a. The date of the court's order if the court:
    - (1) Made a finding that the child has been subjected to child abuse or neglect;
    - (2) Determined that it is unsafe or contrary to the welfare of the child to remain in the home; and
    - (3) Granted custody of the child to the department or county social service board or, in cases arising out of an adjudication by the court that a child is an unruly child, the division of juvenile services; or
  - b. The date that is sixty days after:
    - (1) The date of a hearing under section 27-20-17 which results in retaining a child in shelter care;
    - (2) The date of an order in a dispositional hearing under which a child is placed in foster care; or
    - (3) The date a child is placed in foster care voluntarily and with the consent of the child's parent.
5. For purposes of subsection 2, a child leaves foster care when:
  - a. The court enters an order:

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- (1) Denying a petition to grant care, custody, and control of the child to the ~~department~~county social service board or the division of juvenile services;
  - (2) Terminating an order that granted custody of the child to the department, the county social service board, or the division of juvenile services; or
  - (3) Appointing a legal guardian under section 27-20-48.1;
- b. The court order under which the child entered foster care ends by operation of law;
  - c. The child is placed in a parental home by the court or a legal custodian other than the division of juvenile services and the legal custodian lacks authority to remove the child without further order of the court; or
  - d. The child is placed in a parental home by the division of juvenile services.
6. For purposes of subsection 2, a child is not in foster care on any night during which the child is:
- a. On a trial home visit;
  - b. Receiving services at the youth correctional center pursuant to an adjudication of delinquency; or
  - c. Absent without leave from the place in which the child was receiving foster care.
7. For purposes of this section:
- a. "A finding that the child has been subjected to child abuse or neglect" means:
    - (1) A finding of deprivation made under chapter 27-20; or
    - (2) A conviction of a person, responsible for a child's welfare, for conduct involving the child, under chapter 12.1-16 or sections 12.1-17-01 through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.
  - b. "Compelling reason" means a recorded statement that reflects consideration of:
    - (1) The child's age;
    - (2) The portion of the child's life spent living in the household of a parent of the child;
    - (3) The availability of an adoptive home suitable to the child's needs;
    - (4) Whether the child has special needs; and
    - (5) The expressed wishes of a child age ten or older.

- c. "Department" means the department of human services or its designee, including any county social service board.

**SECTION 27. AMENDMENT.** Section 27-20-20.1 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-20.1. Petition to terminate parental rights - When brought - Definitions.**

1. A petition to terminate parental rights may be made as provided under this section and section 27-20-45.
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, human service zone, or county social service board, 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 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.
3. A petition for termination of parental rights need not be filed if:
  - a. The child is being cared for by a relative approved by the department ~~in collaboration with the county social service board and human service zone;~~
  - b. The department, human service zone, or county social service board has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interests and has notified the court that the documentation is available for review by the court; or
  - c. The department or county social service board before January 1, 2021, or the human service zone has determined:
    - (1) Reasonable efforts to preserve and reunify the family are required under section 27-20-32.2 to be made with respect to the child;

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- (2) The case plan provides such services are necessary for the safe return of the child to the child's home; and
    - (3) Such services have not been provided consistent with time periods described in the case plan.
  4. For purposes of subsection 2, a child in foster care entered foster care on the earlier of:
    - a. The date of the court's order if the court:
      - (1) Made a finding that the child has been subjected to child abuse or neglect;
      - (2) Determined that it is unsafe or contrary to the welfare of the child to remain in the home; and
      - (3) Granted custody of the child to the department, human service zone, or county social service board or, in cases arising out of an adjudication by the court that a child is an unruly child, the division of juvenile services; or
    - b. The date that is sixty days after:
      - (1) The date of a hearing under section 27-20-17 which results in retaining a child in shelter care;
      - (2) The date of an order in a dispositional hearing under which a child is placed in foster care; or
      - (3) The date a child is placed in foster care voluntarily and with the consent of the child's parent.
  5. For purposes of subsection 2, a child leaves foster care when:
    - a. The court enters an order:
      - (1) Denying a petition to grant care, custody, and control of the child to the ~~county social service board~~ human service zone or the division of juvenile services;
      - (2) Terminating an order that granted custody of the child to the ~~department, the county social service board;~~ human service zone or the division of juvenile services; or
      - (3) Appointing a legal guardian under section 27-20-48.1;
    - b. The court order under which the child entered foster care ends by operation of law;
    - c. The child is placed in a parental home by the court or a legal custodian other than the division of juvenile services and the legal custodian lacks authority to remove the child without further order of the court; or
    - d. The child is placed in a parental home by the division of juvenile services.

6. For purposes of subsection 2, a child is not in foster care on any night during which the child is:
  - a. On a trial home visit;
  - b. Receiving services at the youth correctional center pursuant to an adjudication of delinquency; or
  - c. Absent without leave from the place in which the child was receiving foster care.
7. For purposes of this section:
  - a. "A finding that the child has been subjected to child abuse or neglect" means:
    - (1) A finding of deprivation made under chapter 27-20; or
    - (2) A conviction of a person, responsible for a child's welfare, for conduct involving the child, under chapter 12.1-16 or sections 12.1-17-01 through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.
  - b. "Compelling reason" means a recorded statement that reflects consideration of:
    - (1) The child's age;
    - (2) The portion of the child's life spent living in the household of a parent of the child;
    - (3) The availability of an adoptive home suitable to the child's needs;
    - (4) Whether the child has special needs; and
    - (5) The expressed wishes of a child age ten or older.
  - c. "Department" means the department of human services or its designee, including any county social service board.
  - d. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.

**SECTION 28. AMENDMENT.** Section 27-20-30 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-30. Disposition of deprived child.**

1. If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:
  - a. Permit the child to reside with the child's parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.



- b. Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the following:
    - (1) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.
    - (2) The director of the ~~county social~~ human service ~~board~~ zone or other public agency authorized by law to receive and provide care for the child.
  - c. Require the parents, guardian, or other custodian to participate in treatment.
  - d. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian.
  - e. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, establish, by order, some other planned permanent living arrangement.
  - f. Without a compelling reason to the contrary, a court order that transfers the child from the current protective placement to a parent or other biological family must provide a reasonable period of time to facilitate a beneficial transition for the child and other parties involved.
2. Unless a child found to be deprived is found also to be delinquent or unruly and not amenable to treatment, the child may not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

<sup>153</sup> **SECTION 29. AMENDMENT.** Section 27-20-30.1 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-30.1. Disposition of child needing continued foster care services.**

1. For purposes of this section, "child" means an individual between the ages of eighteen and twenty-one years who is in need of continued foster care services.
2. A petition to commence an action under this section must contain information required under section 27-20-21 along with an affidavit either prepared by the administrative ~~county~~ human service zone, as determined by the department of human services, or prepared by an agency or tribal council of a recognized Indian reservation in North Dakota.
3. The court shall issue a summons in accordance with section 27-20-22 upon the filing of a petition and affidavit.
4. If a child is in need of continued foster care services as determined by the human service zone and the department of human services and as set forth in

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<sup>153</sup> Section 27-20-30.1 was also amended by section 5 of Senate Bill No. 2036, chapter 54.

a continued foster care agreement, the court shall make the following judicial determination:

- a. That the child is not deprived, delinquent, or unruly but is in need of continued foster care services;
  - b. That the child will remain in or will return to foster care pursuant to the child's continued foster care agreement;
  - c. That the child's continued foster care agreement has been willfully entered between:
    - (1) The human service zone and the department of human services or its agent, the child, and the foster care provider; or
    - (2) An agency or tribal council of a recognized Indian reservation in North Dakota if the child is not subject to the jurisdiction of the state of North Dakota, the child, and the foster care provider;
  - d. That it is in the best interest of the child to remain in or return to foster care;
  - e. That reasonable efforts were made in accordance with subsection 7 of section 27-20-32.2;
  - f. That the child has attained the age of eighteen or older but does not exceed the age of twenty-one years;
  - g. That the child has satisfied the education, employment, or disability requirements under the Fostering Connections to Success and Increasing Adoptions Act of 2008 [Pub. L. 110-351] and as set forth by the department of human services;
  - h. That the administrative ~~county~~human service zone, as determined by the department, or that an agency or tribal council of a recognized Indian reservation in North Dakota, shall continue foster care case management, unless otherwise agreed to or required by the department;
  - i. That the administrative ~~county~~human service zone or an agency or tribal council of a recognized Indian reservation in North Dakota must have care and placement responsibility of the child;
  - j. That permanency hearing must be as set forth in section 27-20-36; and
  - k. That there are no grounds to file a petition to terminate parental rights under chapter 27-20.
5. Pursuant to ~~N.D.R. Juv.P., Rule 16~~rule 16 of the North Dakota Rules of Juvenile Procedure, a court may modify or vacate the judicial determination made under subsection 4.

<sup>154</sup> **SECTION 30. AMENDMENT.** Subsection 2 of section 27-20-31 of the North Dakota Century Code is amended and reenacted as follows:

<sup>154</sup> Section 27-20-31 was also amended by section 3 of House Bill No. 1520, chapter 256.

2. Placing the child on probation under the supervision of the director, probation officer, or other appropriate officer of the court or the director of the ~~county social~~human service board under conditions and limitations the court prescribes;

**SECTION 31. AMENDMENT.** Section 27-20-38 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-38. Rights and duties of legal custodian.**

A custodian to whom legal custody has been given by the court under this chapter has:

1. The right to the physical custody of the child and the right to determine the nature of the care, placement, and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose.
2. The right and duty to provide for the care, protection, training, and education and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.
3. A duty within thirty days after the removal of a child from the custody of the parent or parents of the child for the purpose of placement into foster care, to exercise due diligence to identify and provide notice to the following relatives: all parents of a sibling of the child entering foster care who have legal custody of the sibling, all adult grandparents, and any other adult suggested by the parents, subject to exceptions due to family or domestic violence, that:
  - a. Specifies that the child has been or is being removed from the custody of the parent or parents of the child;
  - b. Explains the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
  - c. Describes the requirements and standards to become a foster family home and the additional services and supports that are available for children placed in that home; and
  - d. Describes how the relative of the child may enter into an agreement with the department and county social service board to receive a subsidized guardianship payment.
4. For purposes of this section, "sibling of the child entering foster care" means:
  - a. A brother or sister who has at least one biological or adoptive parent in common;
  - b. A fictive brother or sister with a significant bond as identified by the child or parent; or
  - c. A child that would have been considered a sibling but for the termination or other disruption of parental rights, including a death of a parent.

**SECTION 32. AMENDMENT.** Section 27-20-38 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-38. Rights and duties of legal custodian.**

A custodian to whom legal custody has been given by the court under this chapter has:

1. The right to the physical custody of the child and the right to determine the nature of the care, placement, and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose.
2. The right and duty to provide for the care, protection, training, and education and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.
3. A duty within thirty days after the removal of a child from the custody of the parent or parents of the child for the purpose of placement into foster care, to exercise due diligence to identify and provide notice to the following relatives: all parents of a sibling of the child entering foster care who have legal custody of the sibling, all adult grandparents, and any other adult suggested by the parents, subject to exceptions due to family or domestic violence, that:
  - a. Specifies that the child has been or is being removed from the custody of the parent or parents of the child;
  - b. Explains the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
  - c. Describes the requirements and standards to become a foster family home and the additional services and supports that are available for children placed in that home; and
  - d. Describes how the relative of the child may enter into an agreement with the department and ~~county social service board~~ human service zone to receive a subsidized guardianship payment.
4. For purposes of this section, "sibling of the child entering foster care" means:
  - a. A brother or sister who has at least one biological or adoptive parent in common;
  - b. A fictive brother or sister with a significant bond as identified by the child or parent; or
  - c. A child that would have been considered a sibling but for the termination or other disruption of parental rights, including a death of a parent.

<sup>155</sup> **SECTION 33. AMENDMENT.** Section 27-20-44 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-44. Termination of parental rights.**

1. The court by order may terminate the parental rights of a parent with respect to the parent's child if:
  - a. The parent has abandoned the child;
  - b. The child is subjected to aggravated circumstances as defined under subsection 3 of section 27-20-02;
  - c. The child is a deprived child and the court finds:
    - (1) The conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or
    - (2) The child has been in foster care, in the care, custody, and control of the department, ~~or~~ a county social service board, or human service zone, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights; or
  - d. The written consent of the parent acknowledged before the court has been given.
2. If the court does not make an order of termination of parental rights, it may grant an order under section 27-20-30 if the court finds from clear and convincing evidence that the child is a deprived child.

<sup>156</sup> **SECTION 34. AMENDMENT.** Section 27-20-45 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-45. Proceeding for termination of parental rights.**

1. The petition must comply with section 27-20-21 and state clearly that an order for termination of parental rights is requested and that the effect will be as stated in section 27-20-46.
2. If both of the natural parents of the child are not named in the petition either as petitioner or as respondent, the court shall cause inquiry to be made of the petitioner and other appropriate persons in an effort to identify an unnamed parent. The inquiry must include, to the extent necessary and appropriate, all of the following:
  - a. Whether any man is presumed to be the father of the child under chapter 14-20.

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<sup>155</sup> Section 27-20-44 was also amended by section 1 of Senate Bill No. 2185, chapter 259.

<sup>156</sup> Section 27-20-45 was also amended by section 6 of Senate Bill No. 2036, chapter 54.

- b. Whether the natural mother of the child was cohabiting with a man at the time of conception or birth of the child.
  - c. Whether the natural mother of the child has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy.
  - d. Whether any person has formally or informally acknowledged or declared that person's possible parentage of the child.
  - e. Whether any person claims any right to custody of the child.
3. The court shall add as respondent to the petition and cause to be served with a summons any person identified by the court as an unnamed parent, unless the person has relinquished parental rights, or parental rights have been previously terminated by a court.
  4. If the court, after inquiry, is unable to identify an unnamed parent and no person has appeared in the proceeding claiming to be an unnamed parent of the child or to have any right of custody of the child, the court shall enter an order terminating all parental rights of the unnamed parent with reference to the child and the parent and child relationship.
  5. If a petition for termination of parental rights is made by a parent of the child under this section or if a parent consents to termination of parental rights under section 27-20-44, that parent is entitled under section 27-20-26 to legal counsel during all stages of a proceeding to terminate the parent and child relationship.
  6. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, including the petitioner, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless the person retained custody of the child.
  7. At least ten days before the petition is heard, the clerk of district court or juvenile court shall provide a copy of the petition and summons, if any, to the county social service board and the department of human services.

**SECTION 35. AMENDMENT.** Section 27-20-45 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-45. Proceeding for termination of parental rights.**

1. The petition must comply with section 27-20-21 and state clearly that an order for termination of parental rights is requested and that the effect will be as stated in section 27-20-46.
2. If both of the natural parents of the child are not named in the petition either as petitioner or as respondent, the court shall cause inquiry to be made of the petitioner and other appropriate persons in an effort to identify an unnamed parent. The inquiry must include, to the extent necessary and appropriate, all of the following:

- a. Whether any man is presumed to be the father of the child under chapter 14-20.
  - b. Whether the natural mother of the child was cohabiting with a man at the time of conception or birth of the child.
  - c. Whether the natural mother of the child has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy.
  - d. Whether any person has formally or informally acknowledged or declared that person's possible parentage of the child.
  - e. Whether any person claims any right to custody of the child.
3. The court shall add as respondent to the petition and cause to be served with a summons any person identified by the court as an unnamed parent, unless the person has relinquished parental rights, or parental rights have been previously terminated by a court.
  4. If the court, after inquiry, is unable to identify an unnamed parent and no person has appeared in the proceeding claiming to be an unnamed parent of the child or to have any right of custody of the child, the court shall enter an order terminating all parental rights of the unnamed parent with reference to the child and the parent and child relationship.
  5. If a petition for termination of parental rights is made by a parent of the child under this section or if a parent consents to termination of parental rights under section 27-20-44, that parent is entitled under section 27-20-26 to legal counsel during all stages of a proceeding to terminate the parent and child relationship.
  6. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, including the petitioner, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless the person retained custody of the child.
  7. At least ten days before the petition is heard, the clerk of district court or juvenile court shall provide a copy of the petition and summons, if any, to the ~~county social service board~~ human service zone and the department of human services.

**SECTION 36. AMENDMENT.** Section 27-20-47 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-47. Disposition upon termination of parental rights.**

1. If, upon entering an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall:
  - a. Commit the child to the custody of the ~~executive director of the department of human services~~ county social service director or a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption or, in the absence thereof, in a foster home;

- b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian; or
- c. Establish some other planned permanent living arrangement.
2. The custodian has the rights of a legal custodian and authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment.
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.

**SECTION 37. AMENDMENT.** Section 27-20-47 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-47. Disposition upon termination of parental rights.**

1. If, upon entering an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall:
  - a. Commit the child to the custody of the ~~county social service~~human service zone director or a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption or, in the absence thereof, in a foster home;
  - b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian; or
  - c. Establish some other planned permanent living arrangement.
2. The custodian has the rights of a legal custodian and authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment.
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.

<sup>157</sup> **SECTION 38. AMENDMENT.** Section 27-20-49 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-49. Costs and expenses for care of child.**

1. The following expenses are a charge upon the funds of the county or human service zone upon certification thereof by the court:
  - a. The cost of medical and other examinations and treatment of a child ordered by the court.

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<sup>157</sup> Section 27-20-49 was also amended by section 1 of House Bill No. 1070, chapter 260, and section 6 of Senate Bill No. 2073, chapter 264.



- b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children or to a private agency or individual other than a parent.
  - c. The cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court unless the child is in the legal custody of a state agency.
2. The commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel provided at public expense for a party and the supreme court shall pay reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county or human service zone by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.
  3. If, after due notice to the parents or other persons legally obligated to care for and support the child, and to a child over the age of eighteen, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection 1, and expenses payable by the supreme court under subsection 2, the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the county, human service zone, or the state to the county treasurer of the county, the county treasurer of the host county, or to the state treasurer.
  4. Unless it finds that there is no likelihood that the party is or will be able to pay attorney's fees and expenses, the court, in its order or judgment following a hearing under this chapter, shall order the parents or other persons legally obligated to care for and support the child, and the child if over the age of eighteen, to reimburse the presumed amount of indigent defense costs and expenses, as determined by the commission on legal counsel for indigents, and shall notify the party of the right to a hearing on the reimbursement amount. If the party or the state requests a hearing within thirty days of receiving notice under this subsection, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the party and the nature of the burden that reimbursement of costs and expenses will impose.
  5. A party 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 attorney's fees and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the party or the party's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

<sup>158</sup> **SECTION 39. AMENDMENT.** Section 27-20-54 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-54. Destruction of juvenile court records.**

1. Except as otherwise required under section 25-03.3-04, all juvenile court records must be retained and disposed of pursuant to rules and policies established by the North Dakota supreme court.
2. Upon the final destruction of a file or record, the proceeding must be treated as if it never occurred. The juvenile court shall notify each agency named in the file or record of the destruction. All index references, except those which may be made by the attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, law enforcement agencies, and ~~county social service agencies~~human service zones, must be deleted. Each agency, except the attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, law enforcement agencies, and ~~county social service agencies~~human service zones, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court. The attorney general, the department of human services, the department of corrections and rehabilitation, law enforcement agencies, and ~~county social service agencies~~human service zones may not keep a juvenile file or record longer than is required by the records retention policy of that official, department, or agency. Upon inquiry in any matter the child, the court, and representatives of agencies, except the attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, law enforcement agencies, and ~~county social service agencies~~human service zones, shall properly reply that no record exists with respect to the child.

**SECTION 40. AMENDMENT.** Subsection 2 of section 27-21-12 of the North Dakota Century Code is amended and reenacted as follows:

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, the parent's or legal guardian's 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

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<sup>158</sup> Section 27-20-54 was also amended by section 1 of Senate Bill No. 2074, chapter 262.

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~~human service agency~~zone~~.
- 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.

**SECTION 41. AMENDMENT.** Section 30-16-04 of the North Dakota Century Code is amended and reenacted as follows:

**30-16-04. Descent and distribution of real property subject to homestead estate.**

The real property subjected to the homestead estate descends, subject to the full satisfaction of that estate, exempt from decedent's debts except claims in favor of the county for county general assistance, the department of human services for general assistance, and also for claims of the state of North Dakota for repayment of old-age assistance and aid to the permanently and totally disabled and as otherwise provided in section 47-18-04, and must be distributed in the manner in which real property not subjected to a homestead estate is distributed or as directed in the decedent's will. The real property constituting the homestead of a decedent, or any part thereof, may not descend or be distributed to any person other than the surviving spouse and decedent's heirs in the direct descending line as prescribed in title 30.1 until all the decedent's debts are fully paid.

**SECTION 42. AMENDMENT.** Subsection 1 of section 30.1-26-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Alternative resource plan" means a plan that provides an alternative to guardianship, using available support services and arrangements which are acceptable to the alleged incapacitated person. The plan may include the use of providers of service such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care and multipurpose senior

citizen centers; home and community-based care, ~~county social services~~human service zones, and developmental disability services; powers of attorney, representative and protective payees; and licensed congregate care facilities.

**SECTION 43. AMENDMENT.** Subsection 3 of section 30.1-28-11 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as provided in subsection 2, persons who are not disqualified have priority for appointment as guardian in the following order:
  - a. A person nominated by the incapacitated person prior to being determined to be incapacitated, when nominated by means other than provided in subsection 2, if the incapacitated person is fourteen or more years of age and, in the opinion of the court, acted with or has sufficient mental capacity to make an intelligent choice.
  - b. The spouse of the incapacitated person.
  - c. An adult child of the incapacitated person.
  - d. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
  - e. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months prior to the filing of the petition.
  - f. Any relative or friend who has maintained significant contacts with the incapacitated person or a designated person from a volunteer agency.
  - g. A nonprofit corporation established to provide guardianship services; provided, that the corporation does not provide direct care to incapacitated persons. The corporation shall file with the court the name of an employee, volunteer, or other person from the corporation who is directly responsible for the guardianship of each incapacitated person, and shall notify the court in the event the person for any reason ceases to so act, or if a successor is named.
  - h. Any appropriate government agency, including ~~county social~~human service agencieszones, except as limited by subsection 1.
  - i. A person nominated by the person who is caring for or paying benefits to the incapacitated person.

**SECTION 44. AMENDMENT.** Subdivision h of subsection 1 of section 40-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

- h. Use of other statutory tools relating to social and economic development, land use, transportation and roads, health, law enforcement, administrative and fiscal services, recording and registration services, educational services, environmental quality, water, sewer, solid waste, flood relief, parks and open spaces, hospitals, public buildings, or other county functions or services, including creation of cooperative county job development authorities pursuant to section 11-11.1-03, multicounty health units pursuant to chapter 23-35, regional planning and zoning

commissions pursuant to section 11-35-01, boards of joint county park districts pursuant to chapter 11-28 or a combination of boards of park commissioners with a city pursuant to chapter 40-49.1, or ~~multicounty socialhuman service districts~~zones pursuant to chapter 50-01.1.

**SECTION 45. AMENDMENT.** Section 50-01-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-01. CountyHuman service zone obligated to support poor - Eligibility for assistance –~~Transfer of property as security for assistance.~~**

Within the limits of the ~~county human services~~service zone appropriation, each ~~countyhuman service zone~~ in this state is obligated, upon receipt of a written application, to provide ~~county~~ general assistance to persons who are residents of the ~~countyhuman service zone~~ and who are eligible. To be eligible for ~~county~~ general assistance, the applicant:

1. May not have made, before or after making an application for ~~county~~ general assistance, an assignment or transfer of property for the purpose of rendering the applicant eligible for assistance.
2. Shall comply with the written eligibility standards for ~~county~~ general assistance established by the ~~county socialhuman service boardzone director or department of human services~~. A copy of the written standards must be available upon request. Pursuant to this requirement, the ownership of property by an applicant for ~~county~~ general assistance, or by the spouse of the applicant, either individually or jointly, or of insurance on the life of the applicant does not preclude the granting of assistance if the applicant is without funds for the applicant's support. ~~As a condition to the granting of county general assistance, however, the applicant may be required to transfer the property in trust by appropriate instrument as security for relief the applicant may receive, unless the property consists of one of the following:~~
  - a. ~~A homestead.~~
  - b. ~~A life insurance policy having a cash surrender value of less than three hundred dollars.~~
  - c. ~~Personal property of a value less than three hundred dollars, not including household goods, wearing apparel, and personal effects, such as money.~~
  - d. ~~Property selected by the applicant having a value of less than three hundred dollars.~~
  - e. ~~Real or personal property held in trust for the applicant by the federal government.~~
  - f. ~~Real or personal property on which the taking of security may be prohibited through legislation enacted by the Congress of the United States.~~

**SECTION 46. AMENDMENT.** Section 50-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-01.1. Determination of eligibility - Notice - Appeal.**

The ~~human service zone~~ director of the ~~county social service board~~, or an individual designated by the ~~county social service board~~, or the ~~director's designee~~ is responsible for determining, within a reasonable period of time, an applicant's eligibility for ~~county~~ general assistance under this chapter. The applicant must be provided written notice of the determination. The notice must include the reasons for the determination, as well as an explanation of the applicant's right to a timely appeal of the determination to the ~~county social service board~~human service zone board if aggrieved by the decision. Decisions of the ~~county social service board~~human service zone board regarding appeals taken pursuant to this section are subject to judicial review in the manner prescribed by chapter 28-32.

**SECTION 47. AMENDMENT.** Section 50-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-02. ~~County general~~General assistance jurisdiction.**

The ~~county social~~human service board of each ~~county~~zone, through the ~~human service zone director, or the director's designee~~, has exclusive jurisdiction and control of the administration of ~~county~~ general assistance within the ~~county~~human service zone, except as otherwise provided in this title.

**SECTION 48. AMENDMENT.** Section 50-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-04. Records to be kept.**

Every person who administers ~~county~~ general assistance shall maintain reasonable records.

**SECTION 49. AMENDMENT.** Section 50-01-13 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-13. Medical attention and hospitalization furnished to poor.**

Within the limits of the ~~county~~ human servicesservice zone appropriation, the ~~county social~~human service boardzone promptly shall provide necessary medical services, covered in the written eligibility standards for general assistance, for any poor person in the ~~county~~human service zone who is not provided for in a public institution. The ~~county social~~human service boardzone shall cause to be furnished to the person the necessary covered medicines prescribed by a physician. Necessary covered hospitalization must be furnished by the ~~county~~human service zone upon approval or subsequent ratification by the ~~board~~human service zone director or the director's designee. If the poor person is a nonresident of the state, the ~~county~~human service zone furnishing the medical services must be reimbursed within the limits of funds appropriated for that purpose by the legislative assembly for eighty percent of the expenses incurred in carrying out this section. The reimbursement must be made upon vouchers having the approval of the department of human services.

**SECTION 50. AMENDMENT.** Section 50-01-17 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-17. Person required to work.**

If a person applying for ~~county~~ general assistance is able to work, or if any member of that person's family is able to work, the ~~county social~~human service board of the ~~county~~zone in which the person is a resident may insist that those able to work seek employment and the ~~board~~human service zone director or the director's

~~designee~~ may refuse to furnish any assistance until it is satisfied that the person claiming assistance is endeavoring to find work. The ~~board~~human service zone may attempt to secure, for a person claiming ~~county~~ general assistance, who is able to work, employment in the county where the person resides and may call upon residents of the county to aid the ~~board~~human service zone in finding work for that person.

**SECTION 51. AMENDMENT.** Section 50-01-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-17.1. Work requirement conditions.**

If a person applying for ~~county~~ general assistance is able to work, the ~~county social~~human service board~~zone director or the director's designee~~, at its option, may require the applicant to comply with any or all of the following provisions as a condition to receiving ~~public~~general assistance:

1. To register with job service North Dakota.
2. To participate in work incentive programs in accordance with the guidelines established for public assistance programs.
3. To accept work which is available through community work experience programs.

**SECTION 52. AMENDMENT.** Section 50-01-17.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-17.2. Community work experience programs - Development.**

The ~~county social service board~~department of human services may develop community work experience programs through agreements with any public entity, nonprofit agency or organization, or in conjunction with, or through utilization of, applicable federal programs. The number of hours to be worked may be determined by dividing the amount of the assistance payment by the prevailing minimum wage.

**SECTION 53. AMENDMENT.** Section 50-01-17.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-17.3. Community work experience program requirements.**

Any community work experience program established pursuant to this chapter must provide:

1. That appropriate health, safety, and work conditions exist.
2. That the program does not result in displacement of persons currently employed.
3. That the program does not apply to jobs covered by a collective bargaining agreement.
4. That recipients will not be required to travel an unreasonable distance from their homes or to remain away from their homes overnight.

5. That the ~~county social~~ human service ~~board~~ zone shall provide for transportation and all other costs reasonably necessary for and directly related to a recipient's participation in the program.

**SECTION 54. AMENDMENT.** Section 50-01-17.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-17.5. Refusal to comply with work requirements - Denial of relief.**

Refusal of any applicant or recipient, without good cause, to comply with any work requirements established pursuant to this chapter may be grounds for denial or termination of ~~county~~ general assistance.

<sup>159</sup> **SECTION 55. AMENDMENT.** Section 50-01-19 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-19. Duty of relative to aid - Right of recovery by county and department.**

The father, the mother, and every child of any person who is eligible for county general assistance ~~before January 1, 2020, and general assistance thereafter,~~ and who is unable to work to support oneself shall maintain that person to the extent of the ability of each. ~~The county may recover for necessities furnished to an indigent person from that person's father, mother, or adult children.~~

**SECTION 56. AMENDMENT.** Section 50-01-21 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-21. County has and department have preferred claim against estate of recipient of county general assistance or general assistance.**

Funds used for subsistence, medical, hospital, or burial expenses of a recipient of county general assistance or general assistance may not be considered as gifts, and the county ~~has and department have~~ a preferred claim against the estate of any person who has received county general assistance or general assistance for funds expended for that person and that person's legal dependents. The statute of limitations does not run on this type of claim.

**SECTION 57. AMENDMENT.** Section 50-01-26 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-26. County Human service zone of residence for county general assistance purposes.**

A person who has residence in this state, for ~~county~~ general assistance purposes, is a resident of the ~~county~~ human service zone in which the person is living on other than a temporary basis. If a person is living in a ~~county~~ human service zone on a temporary basis, the person is a resident of the ~~county~~ human service zone in which the person most recently lived other than on a temporary basis.

**SECTION 58. AMENDMENT.** Section 50-01-27 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-27. State of residence for county general assistance purposes.**

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<sup>159</sup> Section 50-01-19 was repealed by section 2 of Senate Bill No. 2225, chapter 129.



A person who is a resident of this state for purposes of chapter 50-24.5 is a resident of this state for county general assistance purposes. If a person moves from this state for other than a temporary purpose, the person's residency in this state for county general assistance purposes is lost. Residency in this state is presumed lost if:

1. The person plans to be absent or has been absent from this state for one year or longer; or
2. The person receives any form of public or general assistance, while in another state, which is available only to residents of that state.

**SECTION 59. AMENDMENT.** Section 50-01-28 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-28. Change of residence to another county human service zone.**

~~When~~If a person who is receiving county general assistance in one county human service zone becomes a resident of another county human service zone in this state, the county human service zone from which the person moves shall forward appropriate records and files to the new county human service zone of residence.

**SECTION 60. AMENDMENT.** Section 50-01-29 of the North Dakota Century Code is amended and reenacted as follows:

**50-01-29. Persons with uncertain residence.**

If the residence of a person is uncertain for county general assistance purposes, the county human service zone in which the person lives shall provide county general assistance until that person's residence is determined.

**SECTION 61. AMENDMENT.** Section 50-01.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.1-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. ~~"County agency" means the county social service board.~~
2. ~~"State department~~Department" means the department of human services.
2. "Host county" means the county within the human service zone in which the human service zone administrative office is located and in which the human service zone team members are employed.
3. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
4. "Human service zone director" means a human service zone team member who oversees the human service zone's operation and budget and serves as presiding officer of the human service zone board.
5. "Human service zone team member" means a county employee who is responsible for administering or delivering human services under the direction of the human service zone director.

6. "Human services" means:
  - a. A service or assistance provided to an individual or an individual's family in need of services or assistance, including child welfare services, locally administered economic assistance programs, medical service programs, and aging service programs, to assist the individual or the individual's family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing.
  - b. A service or assistance provided, administered, or supervised by the department in accordance with chapter 50-06.
  - c. Licensing duties as administered or supervised by the department or delegated by the department to a human service zone.
7. "Indirect costs" means salaries, benefits, and operating costs incurred in providing those goods and services to support human services that are generally available for the common benefit of multiple county agencies. These costs include legal representation; facilities and related costs, such as utilities and maintenance; administrative support including payroll, accounting, banking, and coordination; information technology support and equipment; and miscellaneous goods and services, such as transportation, supplies, insurance coverage, phone, and mail services.
8. "Locally administered economic assistance programs" means those primary economic assistance programs that need to be accessible to all citizens of the state through a human service zone office and include:
  - a. Temporary assistance for needy families;
  - b. Employment and training programs;
  - c. Child care assistance programs;
  - d. Medical assistance, including early periodic screening, diagnosis, and treatment;
  - e. Supplemental nutrition assistance programs, including employment and training programs;
  - f. Refugee assistance programs;
  - g. Basic care services;
  - h. Energy assistance programs; and
  - i. Information and referral.

**SECTION 62. AMENDMENT.** Section 50-01.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.1-02. ~~Consolidation of county agencies into multicounty social~~Creation of human service districtszones.**

1. In order to provide optimum service, reduce program costs, and benefit recipients of ~~social~~human services within this state, ~~any two or more counties, by agreement entered into through action of their boards of county commissioners, may~~ shall combine and consolidate their county agencies into a ~~multicounty social~~human service ~~district~~zones in the manner provided in this chapter. ~~Multicounty social~~
2. Human service ~~districts~~zones succeed to all the powers and duties enumerated for county agencies and shall perform all the functions and responsibilities assigned to county agencies by this title. When consistent with this chapter, all provisions relating to county agencies contained in this title apply to and govern ~~multicounty social~~human service ~~districts~~. ~~The~~zones.
3. Counties shall identify other counties with which to enter a human service zone agreement, and together the board of county commissioners of any county desiring to become a member of a multicounty social service district shall file with the state department a written request for membership agreement to create a human service zone, together with a plan for the creation of such a district, if such a district does not already exist no later than December 1, 2019. The agreement must identify the proposed counties of the human service zone, host county, identify the human service zone board members, and agree to seek approval from the department regarding hiring or dismissal of county social services or human service zone employees. The department shall review and approve all agreements in accordance with section 50-01.1-03. The department may modify the agreements as specified in section 50-01.1-03 or if some of the counties are not included in a human service zone. If counties do not submit an agreement, the department shall create the human service zone. The board of county commissioners shall submit a plan must be prepared as prescribed in section 50-01.1-04 by June 1, 2020. The department shall approve the plan in accordance with section 50-01.1-04 by January 1, 2021. The board of county commissioners shall provide quarterly updates as requested by the department to the department after the agreement is approved until the plan is submitted as requested.
4. ~~The request agreement and proposed plan must be approved or disapproved by the state department in accordance with section 50-01.1-03. In permitting the creation of such a district, the state department shall, to as great a degree as possible, allow the consolidation of county agencies in such a manner as will conform with the existing pattern of the trade area and with any regional pattern established by the executive department of this state.~~
5. A county with a population exceeding sixty thousand individuals according to the 2010 United States census may submit an agreement and proposed plan to operate as a single human service zone or to consolidate with other counties into a human service zone.
6. Counties shall consider leveraging existing cooperative agreements between county agencies and shall consider how to collaborate to best meet local need, promote efficiency, service delivery, and ensure quality service.
7. Counties' plan must allow nonresidents of the participating counties of a human service zone to access human services.

8. Counties' plan must continue to provide funding for indirect costs associated with the service delivery of human services pursuant to chapter 50-35.
9. Counties' plan must set forth that the human service zone director may hire and impose disciplinary actions on a human service zone team member. The counties' plan must specify any role transitions for human service zone team members as well as the procedures for team member grievances, appeals, and disciplinary actions. The counties' plan must also permit the department authority to reduce full-time equivalent positions in combination with a transfer of the positions or a human service zone team member's separation from employment. The component of the plan developed under this subsection must be consistent with merit system requirements, chapter 54-44.3 and corresponding rules, and the template developed by the department for the human service zone plans under section 50-06-01.4.
10. The counties' plan must specify that reductions in access points may only be made with agreement of the human service zone board, the county commissions of affected counties, and the department.
11. The counties' plan must include information regarding the human service zone's liability coverage for the human service zone board, human service zone director, human service zone team members, human service zone property, and any unique contractual relationships with the state, other human service zones, or other entities.
12. Counties' plan must include a statement of agreement between the human service zone and the department allowing for review of proposed transfers of staff from the human service zone to the department, from the department to the human service zone, or among other human service zones. Approval by human service zone board or the county commissions is not required.
13. Counties' plan must include a description of all unique locally provided programs and services that the counties are proposing to continue to provide within the human service zone and to be funded under this plan.
14. Counties' agreement and plan must set forth the membership of the human service zone board of a human service zone. The human service zone board may not consist of more than fifteen members, as determined by the boards of county commissioners.

**SECTION 63. AMENDMENT.** Section 50-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.1-03. Manner of determination –Notices–Hearings.**

1. In determining whether the creation of a multicounty socialhuman service districtzone should be approved or established, the state department shall refer to, among other pertinent factors, the following:
  4. a. Whether the affected county agencies are able to supply an adequate level and quality of social and economic assistance services.
  2. b. The number and qualifications of staff personnel serving the affected county agencies.

- 3- c. The ratio of the number of cases handled by the affected county agencies to the number of their staff personnel.
- 4- d. The geographical area and population served by the affected county agencies.
- 5- e. The distance of recipients from the affected county agencies.
- 6- f. The benefits that would be realized from the creation of the ~~district~~human service zone in terms of lower costs, increased availability of services, new services, and improvement of services.

~~Any county that is denied approval to become a member of a multicounty social service district may request a hearing thereon. The state department shall notify the board of county commissioners of the right to appeal. The board has thirty days after receipt of the notice to request a hearing. If a hearing is requested, the state department shall hold the hearing within fifteen days after receipt of the request. At the hearing, evidence may be presented relative to the creation of the proposed multicounty social service district. The hearing must be conducted in accordance with the applicable provisions of chapter 28-32.~~

- g. The amount of current and future access points for individuals to apply for and receive services within a human service zone.
  - h. The existing pattern of the counties trade area and any regional pattern established by the department.
  - i. Whether the county has a population exceeding sixty thousand individuals according to the 2010 United States census to operate as a single human service zone and whether it is in the best interest of the neighboring counties.
  - j. The maximum number of human service zones created may not exceed nineteen.
  - k. Whether the human service zone director can adequately supervise the activities and operations of the human service zone.
  - l. Whether the human service zone board is constituted of individuals that represent the population of the human service zone.
  - m. Other good cause.
2. The department has final approval of a human service zone. The department may establish or modify a human service zone based on the criteria set forth in subsection 1. All human service zones must be initially approved or established by January 1, 2020, and may be modified thereafter through a process developed by the department.

**SECTION 64. AMENDMENT.** Section 50-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.1-04. Plan - Financing - Distribution of property - Governing Human service zone board - Compensation of members.**

1. A plan for the creation of a ~~multicounty social~~ human service district ~~zone~~ must describe the method of operation of the ~~district~~ human service zone office, its administration, its location and the location of any ancillary offices, the disbursements from public funds, and the accountability for funds and manner of reporting receipts and disbursements. ~~The plan must provide that all services provided by county officials to county agencies under this code be provided by those county officials residing within the same county in which the district office of the multicounty social service district is located.~~ The plan must also provide for the distribution of property owned by each of the county agencies affected by the consolidation and for the method of resolution of any disagreement between the boards of county commissioners involved in the ~~multicounty district~~ human service zone or between the governing board and one or more boards of county commissioners. The plan must also require the participating counties to participate in the indirect cost allocation plan. The plan, once approved, may be continued for a definite term or until rescinded or terminated in accordance with its terms. ~~The plan also may provide that the regional director of a regional human service center serves as the director of the multicounty social service district, or modified by the department through a process developed by the department.~~
2. The governing board of the multicounty social service district annually shall prepare a proposed budget for the district at the time and in the manner in which a county budget is adopted and shall submit the proposed budget to the board of county commissioners of each county in the district for approval. The amount budgeted and approved must be sufficient to defray the anticipated expenses of administration and the delivery of social and economic assistance services, exclusive of grants, and must be prorated among the counties based on an agreed-to cost distribution formula that takes into consideration such factors as caseload, population, taxable valuation, and geographical area of the respective counties comprising the district. Within ten days following approval of the proposed budget by the boards of county commissioners, the governing board of the district shall certify the budget to the respective county auditors of the counties in the district, and this amount must be included in the levies of the counties. Each board of county commissioners also shall budget and approve amounts sufficient to defray that county's anticipated costs of county general assistance and that county's share of grants as provided under this title. The amounts budgeted and approved by the several boards of county commissioners must be periodically deposited with the treasurer of the county in which the district office is located, as requested by the treasurer, and must be placed in a special multicounty social service district fund. The governing board, or its president and secretary when authorized by the governing board, shall audit all claims against the fund. The governing board at its regularly scheduled meeting shall approve or ratify all claims against the fund. The county treasurer shall pay approved or ratified claims from the fund. Unexpended funds remaining at the end of a fiscal year may be carried over to the next fiscal year.
3. The governing board of a multicounty social service district consists of not more than fifteen members, as determined by the plan. The plan must establish a method of determining the number of members that will be appointed by each county within the multicounty social service district. The method may consider the ratio that each county's population bears to the total population of the multicounty social service district, the ratio of current social service caseload, or other equitable factors; provided, that each county included in the district must be represented by at least one board member.

The board of county commissioners of each county within the multicounty social service district shall make the appointments to the governing board. Members must be appointed for a term of three years or until a successor has been appointed and qualifies. The members appointed to the initial governing board of a multicounty district, however, must be appointed to staggered terms determined according to the plan approved pursuant to section 50-01.1-03. Each member of the governing board shall qualify by taking the oath prescribed for civil officers and by filing the oath with the county auditor of the county of residence. Each sex must be fairly represented on the board, and each county must be represented on the board by at least one county commissioner of that county. Members shall elect from the governing board a president, a secretary, and other officers as the board determines necessary.

4. The appointing authority shall establish the rate of compensation for members of the governing board and actual expenses incurred by members may be reimbursed at the official reimbursement rates of the appointing authority.

**SECTION 65. AMENDMENT.** Section 50-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.1-04. Plan - Financing - Human service zone board.**

1. A plan for the creation of a human service zone must describe the method of operation of the human service zone office, its administration, its location and the location of any ancillary offices, the disbursements from public funds, and the accountability for funds and manner of reporting receipts and disbursements. The plan must provide for the distribution of property owned by each of the county agencies affected by the consolidation and for the method of resolution of any disagreement between the boards of county commissioners involved in the human service zone or between the governing board and one or more boards of county commissioners. The plan must also require the participating counties to participate in the indirect cost allocation plan. The plan, once approved, may be continued for a definite term or until rescinded, terminated, or modified by the department through a process developed by the department.
2. ~~The governing board of the multicounty socialhuman service district annuallyzone director shall prepare a proposed budget for the districthuman service zone at the time and in the manner in which a county budget is adoptedas requested by the department and shall submit the department-approved proposed budget to the board of county commissioners of each county in the districthuman service zone for approvalreview. The board of county commissioners may not take any action to amend or modify the amount approved by the department. The board of county commissioners may make recommendations to the human service zone director and the department to amend or modify the amount proposed or budgeted. The amount budgeted and approved must be sufficient to defray the anticipated expenses of administration and the delivery of social and economic assistancehuman services, exclusive of grants, and must be prorated among the counties based on an agreed to cost distribution formula that takes into consideration such factors as caseload, population, taxable valuation, and geographical area of the respective counties comprising the district. Within ten days following approvalreview of the proposed budget by the boards of county commissioners, the governing board of the districthuman service zone director shall certify the budget to the respective county auditors of the counties in the district, and this amount must be included in the levies of the counties. Each~~

board of county commissioners also shall budget and approve amounts sufficient to defray that county's anticipated indirect costs of county general assistance and that county's share of grants as provided under this title the human service zone. The amounts budgeted, reviewed, and approved by the several boards of county commissioners or the department, or both must be periodically deposited with the treasurer of the host county in which the district human service zone office is located, as requested by the treasurer, and must be placed in a special multicounty social human service district zone human services fund. The human service zone's income must be deposited into the human service zone human services fund by the treasurer of the host county. The governing human service zone board, or its president and secretary when authorized by the governing board, shall audit establish procedures for the review and approval of all claims against the human service zone human services fund. The governing board at its regularly scheduled meeting human service zone director or designee shall approve or ratify all claims against the human service zone human services fund. The county treasurer of the host county, shall pay approved or ratified claims from the human service zone human services fund. Unexpended human service zone human services funds remaining at the end of a fiscal year may be carried over to the next fiscal year. The department may recalculate and adjust each human service zone's formula payment biannually based on pertinent factors, which include actual expenditures over the prior or current payment period, current costs, offered services, need, income, performance of duties directed or assigned and supervised by the department, and caseload.

3. ~~The governing board of a multicounty social service district consists of not more than fifteen members, as determined by the plan. The plan must establish a method of determining the number of members that will be appointed by each county within the multicounty social service district. The method may consider the ratio that each county's population bears to the total population of the multicounty social service district, the ratio of current social service caseload, or other equitable factors; provided, that each county included in the district must be represented by at least one board member. The board of county commissioners of each county within the multicounty social service district shall make the appointments to the governing board. Members must be appointed for a term of three years or until a successor has been appointed and qualifies. The members appointed to the initial governing board of a multicounty district, however, must be appointed to staggered terms determined according to the plan approved pursuant to section 50-01.1-03. Each member of the governing board shall qualify by taking the oath prescribed for civil officers and by filing the oath with the county auditor of the county of residence. Each sex must be fairly represented on the board, and each county must be represented on the board by at least one county commissioner of that county. Members shall elect from the governing board a president, a secretary, and other officers as the board determines necessary.~~
4. ~~The appointing authority shall establish the rate of compensation for members of the governing board and actual expenses incurred by members may be reimbursed at the official reimbursement rates of the appointing authority.~~

**SECTION 66.** A new section to chapter 50-01.1 of the North Dakota Century Code is created and enacted as follows:

**Duties of human service zone.**



The human service zone shall, under the direction and supervision of the department, unless otherwise directed or determined by the department:

1. Supervise and direct all human services activities conducted by the human service zone, including general assistance or other public assistance.
2. Supervise and administer human services in the human service zone which are financed in whole or in part with funds allocated or distributed by the department.
3. Aid and assist in every reasonable way to efficiently coordinate and conduct human services activities within the human service zone by private as well as public organizations.
4. Subject to subsection 16 of section 50-06-05.1, administer the supplemental nutrition assistance program in the human service zone in conformity with the Food Stamp Act of 1964, and enter an agreement for administering the supplemental nutrition assistance program with the department.
5. Subject to subsection 18 of section 50-06-05.1, administer the home energy assistance program in the human service zone and enter an agreement for administering the home energy assistance program with the department.
6. Charge and collect fees and expenses for services provided by the human service zone's staff in accordance with policies and fee schedules adopted by the department.
7. Supervise and administer designated child welfare services.
8. Supervise and administer human services.
9. Supervise and administer replacement programs with substantially similar goals, benefits, or objectives.
10. If applicable, supervise and administer experimental, pilot, statewide, regional, or transitional programs under the director of the department and with the goals of enhancing quality, effectiveness, and efficiency of programs and services.
11. Cooperate with the department or other human service zones in revising human service zone operations to reflect department guidelines or best practices that may be based on recommendations from experimental or pilot programs.
12. Cooperate with any other human service zone to assure the conduct of initial and ongoing human services with respect to any applicant or eligible beneficiary who is physically present in a human service zone other than the human service zone of which the applicant or eligible beneficiary is a resident.
13. Employ a human service zone director who shall serve as the presiding officer of the human service zone board.
14. Collaborate with the department and other human service zones to ensure the provision of quality, effective, and efficient human services to the citizens of North Dakota.

**SECTION 67.** A new section to chapter 50-01.1 of the North Dakota Century Code is created and enacted as follows:

**Human service zone directors.**

Human service zone directors:

1. Must be employees of the human service zone and located within the human service zone, unless serving more than one human service zone.
2. Shall serve as the presiding officer of the human service zone board.
3. May serve one or more human service zones.
4. May hire, take disciplinary actions, and direct the work of a human service zone team member in accordance with the department's policies. The human service zone director has discretion to hire or separate from employment a human service zone team member, on behalf of the human service zone board, subject to the allotted number of approved and funded staff positions by the department.
5. Shall notify the department and appropriate host county staff, as directed by the county commissioners, regarding the hiring, dismissal, demotion, suspension without pay, forced relocation within the human service zone, reduction-in-force, or reprisal of a human service zone team member.
6. May notify county commissioners, the human service zone board, or other appropriate county staff regarding transfers of staff between the county and the department.
7. Shall establish, as agreed upon by the department, equitable compensation and salary increases for all human service zone team members within established appropriation.
8. Shall develop a budget for the human service zone in partnership with the department and other human service zone directors to ensure the administration of human services.
9. May serve as a designee of the department to supervise department employees assigned to or located within the human service zone.
10. Are the custodian designees of the executive director of the department for any child in the custody of the department.

**SECTION 68.** A new section to chapter 50-01.1 of the North Dakota Century Code is created and enacted as follows:

**Human service zone and department may contract.**

A human service zone and department may contract with another human service zone or any other public or private person to discharge any of its duties or exercise any of its powers to administer human services.

**SECTION 69.** A new section to chapter 50-01.1 of the North Dakota Century Code is created and enacted as follows:

**Standards of administration - Action upon failure to administer.**

1. The department shall adopt standards for administration for human services and shall provide training for the implementation of those standards. Each human service zone shall provide for administration of human services that meet those standards.
2. The department shall develop a system of progressive discipline to address performance issues within the human service zone. The system shall reserve the most serious actions for severe or chronic failure to meet the standards adopted under subsection 1.
3. The department shall provide ongoing performance notifications to the human service zone board and human service zone director related to the overall compliance with the standards of administration.
4. If a human service zone fails to provide for administration of human services that meet the standards adopted under subsection 1, the department may take any of the following actions:
  - a. Provide training to the persons responsible for administration.
  - b. Require the human service zone to prepare and implement a corrective action plan.
  - c. Terminate or modify a human service zone agreement, or plan which may include requiring the reconstituting of the human service zone board or rehiring of a human service zone director as part of a new or modified agreement or plan.
  - d. Recalculate and adjust the human service zone's formula payments.
  - e. Recommend disciplinary action to the human service zone director or the human service zone board.

**SECTION 70.** A new section to chapter 50-01.1 of the North Dakota Century Code is created and enacted as follows:

**Human service zone director hiring.**

The department must be an active participant in the hiring process of the human service zone director and shall designate at least two individuals to participate on the interview panel. The department shall approve or disapprove of the recommendation for the human service zone director from the human service zone board and interview panel before the human service zone board takes action to hire the human service zone director.

**SECTION 71. AMENDMENT.** Section 50-01.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.2-00.1. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Department" means the department of human services.
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 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 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.

3. ~~"Locally administered economic assistance programs" means those primary economic assistance programs that need to be accessible to all citizens of the state through a county social service office and include:~~
  - a. ~~Temporary assistance for needy families;~~
  - b. ~~Employment and training programs;~~
  - c. ~~Child care assistance programs;~~
  - d. ~~Medical assistance, including early periodic screening, diagnosis, and treatment;~~
  - e. ~~Supplemental nutrition assistance programs, including employment and training programs;~~
  - f. ~~Refugee assistance programs;~~
  - g. ~~Basic care services;~~
  - h. ~~Energy assistance programs; and~~
  - i. ~~Information and referral.~~
2. "Host county" means the county within the human service zone in which the human service zone administrative office is located and in which the human service zone team members are employed.

**SECTION 72. AMENDMENT.** Section 50-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.2-01. County ~~social~~Human service zone board - Members - Qualifications.**

Each board of county commissioners shall establish a county social service board consisting of five, seven, or nine members of which one or more must be members of the board of county commissioners. The board of county commissioners of each county within the human service zone shall appoint the appointed members of the county social human service zone board based upon fitness to serve as members by reason of character, experience, and training without regard to political affiliation. The board must include members of each Appointed members of the human service zone board must consist of local elected officials and other key community partners. Each sex county must be represented on the human service zone board by at least one county commissioner of that county. Appointed members shall elect a vice presiding officer and appoint a secretary, and other officers as the human service zone board determines necessary. The human service zone director shall serve as presiding officer of the human service zone board as a nonappointed member.

**SECTION 73. AMENDMENT.** Section 50-01.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.2-02. Members of ~~county social~~human service zone board - Term of office - Oath - Compensation.**

The appointed members of the ~~county social~~human service zone board serve a term of three years or until their successors have duly qualified. ~~Terms of office must be arranged so the term of office of one member expires in one year, the term of one-half the remaining members the next year, and the term of the remaining members the third year.~~The members appointed to the initial human service zone board of a human service zone, however, must be appointed to staggered terms determined according to the plan approved pursuant to section 50-01.1-03. Each appointed member of the human service zone board ~~qualifies~~shall qualify by taking the oath provided for civil officers. The oath must be filed with the county auditor of the county of residency. The appointing authorityhuman service zone shall establish ~~the rate of compensation for~~compensate appointed members of the human service zone board membersat a rate established by the host county commission, upon consultation with the other county commissions in the human service zone, consistent with the rate of compensation for members of other appointed boards within the member counties and not to exceed the compensation and expense reimbursement of members of the legislative assembly. The human service zone shall also pay members for mileage and actual expenses incurred by board members may be reimbursed at the official reimbursement rates of the appointing authorityin attending meetings and in other performance of official duties of the members in the amounts provided by law for other state officers.

**SECTION 74. AMENDMENT.** Section 50-01.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.2-03. Duties of ~~county social~~human service zone board.**

The ~~county social~~human service zone board of each county in this state shall:

1. ~~Supervise and direct all human service activities conducted by the county including county general assistance or other public assistance.~~Provide information to the department relative to the community needs of the human service zone residents and advocate to meet those needs.
2. ~~Supervise and administer, under the direction and supervision of the department of human services, human services in the county which are financed in whole or in part with funds allocated or distributed by the department of human services.~~Review services and programs provided by the human service zone and make periodic recommendations for improvement in services, programs, or facilities.
3. Aid and assist in every reasonable way to efficiently coordinate and conduct human service activities within the ~~county~~human service zone by private as well as public organizations.
4. Subject to subsection 16 of section 50-06-05.1, administer the supplemental nutrition assistance program in the county under the direction and supervision of the department of human services in conformity with the Food Stamp Act of 1964, as amended, and enter into an agreement for administering the supplemental nutrition assistance program with the department of human

services Establish procedures for the review and approval of all claims against the human service zone human services fund.

- ~~5. Subject to subsection 18 of section 50-06-05.1, administer the home energy assistance program in the county under the direction and supervision of the department of human services and to enter into an agreement for administering the home energy assistance program with the department of human services.~~
- ~~6. Charge and collect fees and expenses for services provided by its staff in accordance with policies and fee schedules adopted by the department of human services.~~
- ~~7. Supervise and administer designated child welfare services under the direction and supervision of the department of human services. Through established procedures the department of human services may release the county social service board of this duty or the county social service board may request to be released from this duty by the department of human services. If a county is released from the county's duty to supervise and administer designated child welfare services under this subsection, the county retains its financial responsibility for providing those services unless otherwise negotiated and approved by the department.~~
5. Supervise and take other personnel actions related to the human service zone director with direct consultation and involvement from the department. Hire the human service zone director with the express approval of the department. Employment must be consistent with the provisions of any law, rule, order, or regulation of the United States or any federal agency or authority requiring civil service or merit standards or classifications as a condition for providing funds administered by the department. A human service zone director must be hired by April 1, 2020.
6. Hear and act on employee grievances in accordance with the human service zone plan and in compliance with merit system requirements.

**SECTION 75. AMENDMENT.** Section 50-01.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.2-03.2. County duties. (Effective through July 31, 2019)**

Each county social service board shall administer, under the direction and supervision of the department:

1. Locally administered economic assistance and social service programs;
2. Replacement programs with substantially similar goals, benefits, or objectives; and
3. When necessary, experimental, pilot, or transitional programs with substantially similar goals, benefits, or objectives.

**County duties –Financing in exceptional circumstances. (Effective after July 31through December 31, 2019)**

4. Each county social service board shall administer, under the direction and supervision of the department:

- a.1. Locally administered economic assistance and social and human services programs;
  - b.2. Replacement programs with substantially similar goals, benefits, or objectives; and
  - e.3. When necessary, experimental, pilot, or transitional programs with substantially similar goals, benefits, or objectives.
2. ~~From the abstract of tax list prepared pursuant to section 57-20-04, each county shall annually provide the department of human services a report of the total mills levied for human service purposes pursuant to sections 50-03-01, 50-03-06, and 50-06-2-05, and the countywide value of a mill in each county. Upon receipt of reports from all counties, the department shall determine the statewide average of the mill levies and identify each county that levied ten mills more than that average. Each identified county is entitled to a share of funds appropriated for distribution under this subsection. Each identified county's share is determined by:~~
    - a. ~~Reducing its mill levy necessary to meet the costs of providing human services required under this title by the statewide average mill levy determined under this subsection plus ten mills;~~
    - b. ~~Determining the amount that could have been raised in that county and year through a mill levy in the amount calculated under subdivision a;~~
    - c. ~~Totaling the amounts determined under subdivision b for all counties entitled to a distribution;~~
    - d. ~~Calculating a decimal fraction equal to each identified county's proportionate share of the total determined under subdivision c; and~~
    - e. ~~Multiplying that decimal fraction times one-half of the biennial appropriation.~~
  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 the percentage of that county's average total supplemental nutrition assistance program caseload for the previous fiscal year which reside on federally recognized Indian reservation lands is ten percent or more. The reimbursement must be such that:~~
    - a. ~~An affected county's actual direct costs and indirect costs allocated based on a percentage of each county's direct economic assistance and social services costs for locally administered economic assistance programs will be reimbursed at the percentage of that county's average total supplemental nutrition assistance program caseload for the previous state fiscal year which reside on federally recognized Indian reservation land not to exceed ninety percent;~~
    - b. ~~The affected counties will receive quarterly payments based on the actual county direct and indirect costs, as provided in subdivision a, for the previous state fiscal year;~~

- e. ~~At the end of each fiscal year the actual quarterly payments paid must be reconciled to the current year of calculation of actual direct and indirect costs as provided in subdivision a and supplemental nutrition assistance program caseload and counties must be compensated accordingly in the first quarter of the new fiscal year; and~~
- d. The reimbursement will be calculated for each county and reported to the county social service board prior to September first.

**SECTION 76. AMENDMENT.** Section 50-01.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.2-04. Removal of members of the human service zone board.**

The appointing board of county commissioners may adopt a resolution to remove ~~an appointed~~ member of the county ~~social~~ human service zone board without cause. The board of county commissioners may not remove the human service zone director as presiding officer of the human service zone board.

**SECTION 77. AMENDMENT.** Section 50-01.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.2-05. Actions and proceedings - Duty of state's attorney.**

Any suit or other proceeding arising out of the administration of the laws pertaining to the support of persons eligible for county general assistance or general assistance must be brought by or against the county in its corporate name or human service zone. The state's attorney shall institute and conduct or defend any and all actions or proceedings that may be instituted under chapter 50-01.

<sup>160</sup> **SECTION 78. AMENDMENT.** Subsection 4 of section 50-06-01 of the North Dakota Century Code is amended and reenacted as follows:

- 4. "Human services" means services:
  - a. A service or assistance provided to an individual or an individual's family in need of services or assistance, including child welfare services, economic assistance programs, medical services programs, and aging services programs, to assist the individual or the individual's family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing.
  - b. A service or assistance provided, administered, or supervised by the department in accordance with chapter 50-06.
  - c. Licensing duties as administered or supervised by the department or delegated by the department to a human service zone.

**SECTION 79. AMENDMENT.** Section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-01.4. Structure of the department.**

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<sup>160</sup> Section 50-06-01 was also amended by section 2 of Senate Bill No. 2198, chapter 392.



1. The department includes the state hospital, the regional human service centers, a vocational rehabilitation unit, and other units or offices and administrative and fiscal support services as the executive director determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:
  - a. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, children's trust fund, ~~state youth authority~~, licensure of early childhood programs, ~~services to unmarried parents~~, refugee services, in-home community-based services, quality control, and administration of the interstate compacts on the placement of children and juveniles.
  - b. Administration of programs for individuals with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
  - c. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], home and community-based services, licensure of adult foster care homes, and the committee on aging.
  - d. Administration of behavioral health programs, including:
    - (1) A policy division responsible for reviewing and identifying service needs and activities in the state's behavioral health system in an effort to ensure health and safety, access to services, and quality of services; establishing quality assurance standards for the licensure of substance use disorder program services and facilities; and providing policy leadership in partnership with public and private entities; and
    - (2) A service delivery division responsible for providing chronic disease management, regional intervention services, and twenty-four-hour crisis services for individuals with behavioral health disorders.
  - e. Administration of economic assistance programs, including temporary assistance for needy families, the supplemental nutrition assistance program, home energy assistance, child ~~support~~care assistance, refugee assistance, work experience, work incentive, and quality control.
  - f. Administration of medical service programs, including medical assistance for children's health insurance program, Medicaid waivers, early and periodic screening, diagnosis and treatment, utilization control, autism services, and claims processing.
  - g. Administration of general assistance.
  - h. Administration of child support.

2. The executive director shall consult with and maintain a close working relationship with the state department of health; with the department of corrections and rehabilitation and the superintendents of the school for the deaf and the North Dakota vision services - school for the blind to develop programs for individuals with developmental disabilities; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with ~~county social~~human service agencieszones.
3. By August 1, 2019, the department shall establish a template for the development of human service zone plans, including process and content requirements, access point expectations, client grievances procedures, human resources, and locally funded programs or services and how those services will be addressed.
4. The department shall develop, with assistance from the North Dakota association of counties, a process for consultation and technical assistance for human service zone working groups by August 1, 2019.

<sup>161</sup> **SECTION 80. AMENDMENT.** Section 50-06-01.9 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-01.9. Criminal history record checks.**

In accordance with section 12-60-24, the department may require criminal history record checks as the department determines appropriate for:

1. Job applicants of the department and employees of the department upon hiring;
2. Job applicants of the ~~county social~~human service agencieszone and the department's and ~~county social~~human service agencies'zones' contractors and contractors' subcontractors that may have access to federal tax information received from the United States internal revenue service through a computer match and stored in the department's eligibility system;
3. A criminal history record check conducted under subsections 1 and 2 is valid for ten years, after which the department shall require another criminal history record check on employees of the department, ~~county social~~human service agencieszones, and the department's and ~~county social~~human service agencies'zones' contractors and contractors' subcontractors that may have access to federal tax information received from the United States internal revenue service through a computer match and stored in the department's eligibility system;
4. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers;
5. Providers holding, applicants for, and emergency designees and staff members of providers holding and applicants for early childhood services licensure, self-declaration, or in-home provider registration under chapter 50-11.1. The department also may require criminal history record checks for

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<sup>161</sup> Section 50-06-01.9 was also amended by section 1 of House Bill No. 1115, chapter 408.

household members of a residence out of which early childhood services within the provider's home are provided; and

6. Medicaid services applicant providers, Medicaid services providers, staff members of the applicant provider or provider, or an individual with a five percent or more direct or indirect ownership interest in the applicant provider or provider under chapter 50-24.1.

<sup>162</sup> **SECTION 81. AMENDMENT.** Section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-05.1. Powers and duties of the department.**

The department has the following powers and duties to be administered by the department through its state office or ~~through~~ regional human service centers, human service zones, or otherwise as directed by ~~it~~ the department:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.
4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of deprived, unruly, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate human services related legislation to the legislative assembly.
8. To direct and supervise ~~county social~~ human service board ~~zone~~ activities as may be financed in whole or in part by or with funds allocated or distributed by the department and administer a statewide program for state-funded human services, staffing, and administration costs related to the administration of human services.

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<sup>162</sup> Section 50-06-05.1 was also amended by section 4 of House Bill No. 1102, chapter 404, section 10 of Senate Bill No. 2055, chapter 438, section 11 of Senate Bill No. 2055, chapter 438, and section 1 of Senate Bill No. 2313, chapter 394.

9. To secure, hold, and administer for the purpose for which it is established any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
10. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department, including early childhood programs, nonmedical adult care facilities and maternity homes, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
11. To permit the making of any surveys of human service needs and activities if determined to be necessary.
12. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
13. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, ~~county social~~human service board, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the life skills and transition center, state hospital, or North Dakota youth correctional center.
14. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court.
15. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case.
16. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise ~~county~~human service zone administration of that program. Provided, however, that the department with the consent of the budget section of the legislative management may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act. The department may not deny assistance under the supplemental nutrition

assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

17. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing assistance payments, and rental subsidies under any rental assistance programs initiated by the federal government not otherwise by law made the responsibility of another state agency possessing statewide jurisdiction.
18. To act as the official agency of the state in the administration of the home energy assistance program; to direct and supervise county human service zone administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the budget section of the legislative management may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.
19. To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.
20. To exercise and carry out any other powers and duties granted the department under state law.
21. To administer, allocate, and distribute any funds made available for the payment of transitional living services, to develop standards and conduct needs assessments regarding transitional living services, to develop or approve and to evaluate demonstration projects offering transitional living programs, to approve transitional living facilities for the purpose of providing foster care, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection. For purposes of this subsection:
  - a. "Transitional living facility" means a specific site, which is identified by a licensed child-placing agency or residential child care facility and which is approved by the department, for the provision of transitional living services.

- b. "Transitional living program" means a program that provides transitional living services and may include an identified program operations location approved by the department.
  - c. "Transitional living services" may include housing, supervision, and supportive services intended and designed to assist persons who have received foster care services and who have reached age seventeen, but who have not reached age twenty-one, to achieve independence and self-sufficiency.
22. With the approval of the governor, to lease or transfer use of any part of the life skills and transition center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:
- a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the life skills and transition center.
  - b. The transaction is exempt from the provisions of section 50-06-06.6.
  - c. The term of any lease may not exceed ninety-nine years.
  - d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
  - e. Any funds realized by any transaction must be deposited in the state's general fund.
23. To act as a decedent's successor for purposes of collecting amounts due to the department or human service zone, unless otherwise directed or determined by the department. Any affidavit submitted by the department under section 30.1-23-01 must conform to the requirements of that section except that the affidavit may state that twenty days have elapsed since the death of the decedent.
24. To provide those services necessary for the department and for ~~county-social~~ human service ~~boards~~ zones to comply with the provisions of any law, rule, order, or regulation of the United States or any federal agency or authority requiring civil service or merit standards or classifications as a condition for providing funds administered by the department.
25. For purposes of administration of programs, and subject to legislative appropriation, funds are obligated at the time a written commitment is made to pay a vendor or contractor for services or supplies either delivered or to be delivered. This subsection applies to payments and commitments made on or after January 1, 1997.
26. ~~Notwithstanding section 50-01.2-00.1, to~~ To determine eligibility for medical assistance and children's health insurance program benefits when the department receives a joint application for these benefits.

27. To administer, allocate, and distribute any funds made available for kinship care services and payments and services in response to the federal Family First Prevention Services Act as part of the Bipartisan Budget Act of 2018 [Pub. L. 115-123].
28. To contract with another human service zone or any other public or private person to discharge any of the department's duties or exercise any of the department's powers to administer human services.

**SECTION 82. AMENDMENT.** Subsection 3 of section 50-06-05.3 of the North Dakota Century Code is amended and reenacted as follows:

3. Each human service center must have a human services advisory group consisting of the ~~county social~~ human service zone directors of the region served, the public health directors of the region served, two current county commissioners appointed by the executive director of the department, and five additional members appointed by the executive director of the department. Each advisory group member must be a resident of the region the member is appointed to serve. The term of office for each appointed member is two years and arranged so that the term of three of the appointed members expires at the end of the first year and the term of the remaining four appointed members expires at the end of the second year, except for those first members appointed, three members shall serve a one-year term and four members shall serve a two-year term. The director shall select the appointed members of each human service advisory group on the basis of population of the counties in the region served by the human service center. Each county in the region must be represented by at least one member on the human service advisory group. To the extent possible, appointed membership of the advisory group must reflect regional interests in the fields of developmental disabilities, social services, mental health, and substance use disorders. The executive director of the department shall appoint a chairman for each advisory group from the membership of the advisory group. The executive director of the department shall fill a vacancy occurring within an advisory group for other than the expiration of a term in the same manner as original appointments, except that appointments must be made only for the unexpired term. The department shall compensate appointed members of a human service advisory group at the rate of forty-five dollars per day, not to exceed twenty-five days in any one year. The department also shall pay members for mileage and actual expenses incurred in attending meetings and in the performance of their official duties in the amounts provided by law for other state officers.

**SECTION 83. AMENDMENT.** Section 50-06-05.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-05.8. Department to assume costs of economic assistance and social service programs. (Effective through December 31, 2019)**

The department of human services shall pay each service area's expenses for administering economic assistance and social service programs for calendar years after December 31, 2017, based on the formula payment amount calculated for each service area under chapter 50-34.

~~Department to assume certain costs of certain social service programshuman services. (Effective after December 31, 2019) Notwithstanding section 50-06-2-05, or any other provision in title 50 to the contrary, and in addition to~~

~~the programs identified in section 50-06-20, the~~The department of human services shall pay the local expenses of administration incurred by a county~~each human service zone's expenses for administering human services for calendar years after December 31, 2019, for family preservation programs; a county's share of the cost of the electronic benefits transfers for the supplemental nutrition assistance program incurred after December 31, 2019; and the computer processing costs incurred by the county after December 31, 2019, which exceed the 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~~based on the formula payment amount calculated for each human service zone under chapter 50-35. The executive director of the department shall authorize expenditures from the human service finance fund to reimburse the department for the department's costs of providing human services that historically have been provided by a county or human service zone, or for a new service or program based on federal or state law.

**SECTION 84. AMENDMENT.** Section 50-06-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-06.2. Clinic services - Provider qualification - Utilization of federal funds.**

Within the limits of legislative appropriation therefor and in accordance with rules established by the department, the department may defray the costs of preventive diagnostic, therapeutic, rehabilitative, or palliative items or services furnished medical assistance eligible individuals by regional human service centers or designated behavioral health providers. Within the limits of legislative appropriations and to the extent permitted by state and federal law and regulations established thereunder, it is the intent of the legislative assembly that federal funds available under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] be utilized to defray the costs of identifiable mental health clinic services furnished eligible individuals in regional human service centers and that federal funds available under title XX of the Social Security Act [42 U.S.C. 1397 et seq.] be utilized to defray the costs of identifiable ~~social~~human services furnished to eligible individuals by ~~county social~~human service ~~boards~~zones and regional human service centers.

**SECTION 85. AMENDMENT.** Section 50-06-06.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-06.5. Continuum of services for individuals with serious and persistent mental illness.**

1. The department of human services shall develop a plan for an integrated, multidisciplinary continuum of services for individuals with serious and persistent mental illness. The continuum may consist of an array of services provided by private mental health professionals, private agencies, ~~county social~~human service agencies~~zones~~, human service centers, community-based residential care and treatment facilities, and private and public inpatient psychiatric hospitals. When appropriate, access to the continuum must be through human service centers. Within the limits of legislative appropriations, the plan for a continuum may include:
  - a. Programs, and appropriate related facilities, to provide socialization skills.
  - b. Programs, and appropriate related facilities, to provide basic living skills.



- c. Appropriate residential facilities and other housing options.
  - d. Appropriate training, placement, and support to enhance potential for employment.
  - e. Appropriate delivery and control of necessary medication.
  - f. Appropriate economic assistance.
  - g. An inpatient facility with appropriate programs to respond to persons who require hospitalization.
  - h. Peer and recovery support.
  - i. Crisis service that is available twenty-four hours a day seven days a week.
2. The continuum of care must provide that a person requiring treatment be submitted to the least restrictive available conditions necessary to achieve the purposes of treatment. The department shall ensure appropriate cooperation with ~~county social~~ human service ~~agencies~~ zones and private providers in achieving the continuum of care.

**SECTION 86. AMENDMENT.** Section 50-06-06.14 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-06.14. Placement of children - Least restrictive care.**

The department and ~~county social~~ human service ~~boards~~ zones shall explore the option of kinship care ~~when~~ <sup>if</sup> a child is unable to return home due to safety concerns. Absent kinship options, the department and ~~county social~~ human service ~~boards~~ zones shall provide permanency options that are in the least restrictive care and near the family's home as required by the federal Adoption and Safe Family Act of 1997 [Pub. L. 105-89; 111 Stat. 2115; 42 U.S.C. 671].

**SECTION 87. AMENDMENT.** Section 50-06-12 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-12. County Human service zone bound by reciprocal agreements of department - Duty of state and ~~county~~ human service zone when person determined not entitled to support.**

Any agreement made by the department under the provisions of section 50-06-11 for the acceptance, transfer, and support of any person from another state is binding on the ~~county~~ human service zone where such person is residing. Neither this state nor any ~~county~~ human service zone in this state shall be committed to the support of any person who is held by the department not to be entitled to public support under the laws of this state.

**SECTION 88. AMENDMENT.** Section 50-06-20 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-20. Programs funded at state expense - Interpretation.**

1. The state shall bear the cost, in excess of the amount provided by the federal government, of:

- a. As provided in section 50-24.1-14, medical assistance services provided under chapter 50-24.1;
  - b. Energy assistance program benefits provided under subsection 18 of section 50-06-05.1;
  - c. Supplements provided under chapter 50-24.5 as basic care services;
  - d. Services, programs, and costs listed in section 50-09-27;
  - e. Welfare fraud detection programs; and
  - f. Human services provided by the human service zones or the department;
  - g. General assistance under chapter 50-01;
  - h. Special projects approved by the department and agreed to by any affected county social human service board zone; and
  - i. Programs and services unique to the human service zone which have been included in the approved human service zone plan.
2. The state shall bear the costs of amounts expended for service payments for elderly and disabled and expanded service payments for elderly and disabled.
  3. This section does not grant any recipient of services, benefits, or supplements identified in subsection 1, any service, benefit, or supplement that a recipient could not claim in the absence of this section.

**SECTION 89. AMENDMENT.** Section 50-06.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.2-01. Purpose - Interpretation.**

It is the purpose of this chapter to establish a system for planning, coordinating, and providing comprehensive human services administered by ~~county social~~ human service ~~boards~~ zones and human service centers. This chapter must be construed to effectuate the following public purposes:

1. To help individuals or their families to achieve, maintain, or support the highest attainable level of personal independence and economic self-sufficiency.
2. To prevent, remedy, or alleviate neglect, abuse, or exploitation of children and adults unable to protect their own interests.
3. To provide a continuum of community-based services adequate to appropriately sustain individuals in their homes and in their communities and to delay or prevent institutional care.
4. To preserve, rehabilitate, and reunite families.
5. To assist in securing referral or admission of individuals to institutional care when other forms of care are not appropriate.

**SECTION 90. AMENDMENT.** Section 50-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.2-02. Definitions.**

As used in this chapter:

1. "Comprehensive human services" means services included in the comprehensive human services plan published by the state agency and human services required by state law or state agency regulation or federal law or regulation as a condition for the receipt of federal financial participation in programs administered under the provisions of this title.
2. ~~"County agency" means the county social service board in each county of the state.~~
3. ~~"County plan" means the county human services plan required by section 50-06.2-04.~~
4. "Family home care" means the provision of room, board, supervisory care, and personal services to an eligible elderly or disabled person by the spouse or by one of the following relatives, or the current or former spouse of one of the following relatives, of the elderly or disabled person: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew. The family home care provider need not be present in the home on a twenty-four-hour basis if the welfare and safety of the client is maintained.
- 5-3. "Human service center" means a regional center established under section 50-06-05.3.
4. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the state agency.
5. "Human service zone plan" means the human service zone plan required by section 50-06.2-04.
6. "Human services" means:
  - a. A service or assistance provided to an individual or an individual's family in need of services or assistance, including child welfare services, economic assistance programs, medical service programs, and aging service programs, to assist the individual or the individual's family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing.
  - b. A service or assistance provided, administered, or supervised by the department in accordance with chapter 50-06.
  - c. Licensing duties as administered or supervised by the department or delegated by the department to a human service zone.
- 6-7. "Qualified service provider" means a ~~county agency~~human service zone or independent contractor which agrees to meet standards for service and operations established by the state agency.
- 7-8. "State agency" means the department of human services.

**SECTION 91. AMENDMENT.** Section 50-06.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.2-03. Powers and duties of the state agency.**

The state agency has the following powers or duties under this chapter:

1. To act as the official agency of the state in the administration of the human services ~~programs~~ for individuals and families in conformity with state and federal requirements.
2. To prepare, at least biennially, a comprehensive human services plan which must:
  - a. Include human services determined essential in effectuating the purposes of this chapter.
  - b. Detail the human services identified by the state agency for provision by human service centers and the services which the ~~county agencies have agreed to~~ human service zones make available in approved ~~county~~ human service zone plans as a condition for the receipt of any funds allocated or distributed by the state agency.
3. To make available, through ~~county agencies~~ human service zone or human service centers, any or all of the services set out in the comprehensive human services plan on behalf of those individuals and families determined to be eligible for those services under criteria established by the state agency.
4. To supervise and direct the comprehensive human services administered by ~~county agencies~~ human service zone and human service centers through standard-setting, technical assistance, approval of ~~county~~ human service zone and regional plans, preparation of the comprehensive human services plan, evaluation of comprehensive human services ~~programs~~, and distribution of public money for services.
5. Within the limits of legislative appropriations and at rates determined payable by the state agency, to pay qualified service providers, which meet standards for services and operations, for the provision of the following services as defined in the comprehensive human services plan which are provided to individuals who, on the basis of functional assessments, income, and resources, are determined eligible for the services in accordance with rules adopted by the state agency:
  - a. Homemaker services;
  - b. Chore services;
  - c. Respite care;
  - d. Home health aide services;
  - e. Case management;
  - f. Family home care;
  - g. Personal attendant care;

- h. Adult family foster care; and
  - i. Such other services as the state agency determines to be essential and appropriate to sustain individuals in their homes and in their communities and to delay or prevent institutional care.
6. To take actions, give directions, and adopt rules as necessary to carry out the provisions of this chapter.

For purposes of this chapter, resources do not include the individual's primary home and the first fifty thousand dollars of liquid assets.

**SECTION 92. AMENDMENT.** Section 50-06.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.2-04. Powers and duties of county agencies. (Effective through December 31, 2019)**

Each county agency has the following powers and duties under this chapter:

1. To administer comprehensive human services programs for individuals and families at the county level in conformity with state and federal requirements under the direction and supervision of the state agency.
2. To publish and provide to the state agency a county human services plan which must include the following:
  - a. A statement of the goals of county human services programs in the county.
  - b. Methods used to identify persons in need of services and the social problems to be addressed by the county human services programs.
  - c. A description of each county human service proposed and identification of the agency or person proposed to provide the service.
  - d. The amount of money proposed to be allocated to each service.
  - e. An agreement to make available those human services required by state law and by federal law or regulation as a condition for the receipt of federal financial participation in programs administered by county agencies under the provisions of this title.

The date of submission of the county human services plan to the state agency must be determined so that the plan is coordinated with the proposed and final comprehensive human services plan.

3. To make available the human services detailed in the comprehensive human services plan which the county agency has included in the approved county plan and to provide such other human services as the county agency determines essential in effectuating the purposes of this chapter within the county. To the extent funding is available under section 50-06.2-03 and chapter 50-24.1, the county plan must include the services enumerated in those sections. The county agency shall make these services available to any individual requesting service and determined eligible on the basis of a functional assessment conducted in accordance with state and federal laws and regulations. The individual shall pay for the services in accordance with a

fee scale based on family size and income. The county agency may contract with any qualified service provider in its provision of those enumerated services.

4. To submit annually to the board of county commissioners a budget containing an estimate and supporting data, setting forth the funds needed to carry out the provisions of this chapter.

**Powers and duties of county agencies human service zones. (Effective after December 31, 2019)** Each ~~county agency~~ human service zone has the following powers and duties under this chapter:

1. To administer comprehensive human services ~~programs~~ for individuals and families at the ~~county~~ human service zone level in conformity with state and federal requirements under the direction and supervision of the state agency.
2. To publish and provide to the state agency a ~~county human services~~ service zone plan ~~which that~~ must include the following:
  - a. A statement of the goals of ~~county~~ human service zone human services ~~programs~~ in the ~~county~~ human service zone.
  - b. Methods used to identify persons in need of services and the social problems to be addressed by the ~~county~~ human service zone human services ~~programs~~.
  - c. A description of each ~~county~~ human service zone human services ~~services~~ proposed and identification of the agency or person proposed to provide the service.
  - d. The amount of money proposed to be allocated to each service.
  - e. An agreement to make available those human services required by state law and by federal law or regulation as a condition for the receipt of federal financial participation in programs administered by ~~county agencies~~ human service zones under the provisions of this title.

The date of submission of the ~~county human services~~ service zone plan to the state agency must be determined so that the plan is coordinated with the proposed and final comprehensive human services ~~service zone~~ plan.

3. To make available the human services detailed in the comprehensive human services ~~service zone~~ plan which the ~~county agency~~ human service zone has included in the approved ~~county~~ human service zone plan and to provide such other human services as the ~~county agency~~ human service zone determines essential in effectuating the purposes of this chapter within the ~~county~~ human service zone. To the extent funding is available under section 50-06.2-03 and chapter 50-24.1, the ~~county~~ human service zone plan must include the services enumerated in those sections. The ~~county agency~~ human service zone shall make these services available to any individual requesting service and determined eligible on the basis of a functional assessment conducted in accordance with state and federal laws and regulations. The individual shall pay for the services in accordance with a fee scale based on family size and income. The ~~county agency~~ human service zone may contract with any qualified service provider in its provision of those enumerated services.

4. To submit annually to the board of county commissioners a budget, approved by the state agency, containing an estimate and supporting data, setting forth the ~~county~~ funds needed to carry out the provisions of this chapter.

**SECTION 93. AMENDMENT.** Section 50-06.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.2-06. Freedom of choice.**

Each person eligible for services under this chapter, or the person's representative, must be free to choose among available qualified service providers that offer competitively priced services. The ~~county agency~~ human service zone shall inform each eligible applicant for services, provided under this chapter, of the identity of qualified service providers available to provide the service required by the applicant. The ~~county agency~~ human service zone shall make and document reasonable efforts to inform potential service providers of the anticipated need for services in the ~~county~~ human service zone.

**SECTION 94. AMENDMENT.** Section 50-09-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Account" means a demand deposit account, checking or negotiable withdrawal order account, share account, share draft account, savings account, time deposit account, securities account, money market mutual fund account, or any other account or arrangement that reflects an owner's share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, to the extent the owner is permitted to redeem the share or interest by an order for payment to a third party.
2. "Assistance" means money payments with respect to, or goods and services provided for dependent children, including payments for the care of unmarried mothers or fathers and their infants.
3. "Child support" has the meaning provided in section 14-09-09.10.
4. "~~County agency~~" means ~~the county social service board in each of the counties of the state.~~
5. "Dependent child" means any needy child who is described in a state plan for aid and services to needy families submitted pursuant to title IV-A.
- 6-5. "Financial institution" means:
  - a. A depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)];
  - b. An institution-affiliated party, as defined in section 3(u) of the Federal Deposit Insurance Act [12 U.S.C. 1813(u)];
  - c. Any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act [12 U.S.C. 1752], including an

institution-affiliated party of such a credit union, as defined in section 206(r) of the Federal Credit Union Act [12 U.S.C. 1786(r)]; and

- d. Any benefit association, insurance company, safe deposit company, securities intermediary, money market mutual fund, or similar entity authorized to do business in the state.
6. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the state agency.
7. "Obligor" has the meaning provided in section 14-09-09.10.
8. "Past-due support" has the meaning provided in section 14-09-09.10.
9. "Secretary" means the secretary of the United States department of health and human services.
10. "Securities account" has the meaning provided in section 41-08-41.
11. "Securities intermediary" has the meaning provided in section 41-08-02, but does not include a clearing corporation.
12. "State agency" means the North Dakota department of human services.
13. "Title IV-A" means title IV-A of the Social Security Act, as adopted by title I of Pub. L. 104-193 [110 Stat. 2110 et seq.; 42 U.S.C. 601 et seq.].
14. "Title IV-B" means title IV-B of the Social Security Act [Pub. L. 90-248, title II, sec. 240(c); 81 Stat. 911; 42 U.S.C. 620 et seq.], as amended.
15. "Title IV-D" means title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
16. "Title IV-E" means title IV-E of the Social Security Act [Pub. L. 96-272, title I, sec. 101(a)(1); 94 Stat. 501; 42 U.S.C. 670 et seq.], as amended.
17. "Work activity" means any activity permitted or required to be treated as work for purposes of calculating a work participation rate.

**SECTION 95. AMENDMENT.** Section 50-09-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-02. Duties of the state agency.**

The state agency shall:

1. Take such action and adopt rules as may become necessary to entitle the state to receive funds from the federal government under title IV-A.
2. Supervise the administration of temporary assistance for needy families throughout the state of North Dakota.
3. Take such action, give such directions, and adopt rules as may be necessary or desirable to carry out the provisions of this chapter, including the adoption



and application of suitable standards and procedure to ensure appropriate treatment of all applicants for temporary assistance for needy families.

4. Cooperate with the federal government in matters of mutual concern pertaining to temporary assistance for needy families, including the adoption of such methods of administration as are found by the state agency to be appropriate for the efficient operation of the plan for such assistance.
5. Provide such qualified employees and representatives as may be necessary.
6. Prescribe the form of and print and supply to the ~~county agencies~~ human service zones blanks for applications, reports, and such other forms as it may deem necessary and advisable.
7. Have authority to establish and maintain personnel standards on a merit basis for personnel employed by the state and the ~~county public assistance agencies not covered by a statewide merit system~~ human service zone.
8. Make such reports in such form and containing such information as the federal government from time to time may require.
9. Make any determinations respecting title IV-A not expressly reserved to the federal government under federal law.
10. Determine if the terms of any waiver of federal requirements, pertaining to the aid to families with dependent children program, submitted to the federal government before August 22, 1996, are consistent with the requirements of title IV-A.
11. Determine the expenditures that constitute qualified state expenditures for purposes of this chapter.
12. Determine the costs that constitute administrative costs for purposes of this chapter.
13. Determine in any case if assistance provided will be funded through qualified state expenditures, funds made available from the federal government under title IV-A, or a combination thereof.
14. Assist recipients of temporary assistance for needy families, in a form and manner determined appropriate by the state agency, but which need not be uniform among families or among counties.
15. Administer all funds appropriated or made available to it for the purpose of carrying out the provisions of this chapter.
16. Act as the official agency of the state in the administration of the child support enforcement program and medical support enforcement program in conformity with title IV-D. In administering the child support enforcement and medical support enforcement programs, the state agency may contract with any public or private agency or person to discharge the state agency's duties and must maintain an office in each of the eight planning regions of the state.

17. Take actions and adopt rules necessary to entitle the state to receive funds from the federal government under the child care and development block grant [42 U.S.C. 9858 et seq.], as amended.
18. Have authority to establish a program for families that include both a minor child and an incapacitated parent of that minor child, using no federal funds derived from temporary assistance for needy families block grant funds, which otherwise functions in substantially the form and manner of the temporary assistance for needy families program.
19. For purposes of section 674(e)(2) of the Social Security Act [42 U.S.C. 674(e)(2)], approve families, outside of the jurisdiction of the state of North Dakota, for placement of children for adoption.
20. Act as the official agency of the state in the administration of child and family services in conformity with title IV-B and to direct and supervise county human service zone administration of that program, unless otherwise directed or determined by the state agency.
21. Act as the official agency of the state in the administration of federal payments for foster care and adoption assistance in conformity with title IV-E and to direct and supervise county human service zone administration of that program, unless otherwise directed or determined by the state agency.
22. Provide, upon request and insofar as staff resources permit, technical assistance concerning the requirements of title IV-B and title IV-E to courts within this state, including tribal courts, and to state's attorneys and tribal prosecutors within this state.
23. Make training available to state's attorneys and assistant state's attorneys who are willing to collaborate with colleagues in other counties on petitions to terminate parental rights.

<sup>163</sup> **SECTION 96. AMENDMENT.** Section 50-09-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-02.2. Assistance for adopted children with special needs.**

Assistance provided under this chapter or chapter 50-24.1 after adoption to a child with special needs must be provided without regard to the income or resources of the adopting parents. Except as provided in this section, such assistance continues until the adopted child becomes eighteen years of age, is emancipated, or dies; the adoption is terminated; or a determination of ineligibility is made by the county human service zone or state agency, whichever occurs earlier. If sufficient funds are available, the county human service zone or state agency may continue assistance for an adopted child until the child reaches twenty-one years of age if the human service zone or state agency determines that the adopted child is a student regularly attending a secondary, postsecondary, or career and technical education school in pursuance of a course of study leading to a diploma, degree, or gainful employment. Assistance provided to an adopted child must continue regardless of the residence of the adopting parents. A~~The~~ state or county agency or human service zone may require, as a condition of receiving assistance under this chapter or chapter 50-24.1, that the adopting parents enter ~~into~~ a contract or agreement regarding the type of

<sup>163</sup> Section 50-09-02.2 was also amended by section 1 of Senate Bill No. 2112, chapter 402.

assistance to be received; the amount of assistance; the identity of the physical, mental, or emotional condition for which medical assistance is received; or any conditions for continued receipt of assistance. A child with special needs is a child legally available for adoptive placement whose custody has been awarded to the ~~department~~state agency or a ~~county social~~human service board~~zone~~ and who is seven years of age or older; under eighteen years of age with a physical, emotional, or mental disability or has been diagnosed by a licensed physician to be at high risk for such a disability; a member of a minority; or a member of a sibling group.

**SECTION 97. AMENDMENT.** Section 50-09-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-03. Duties of ~~county agency~~human service zone.**

In the administration of assistance under this chapter, a ~~county agency~~human service zone shall, unless otherwise directed or determined by the state agency:

1. Administer the temporary assistance for needy families program in its ~~county~~human service zone, subject to the rules of the state agency.
2. Report to the state agency at such times and in such manner and form as the state agency, from time to time, may direct.
3. Submit annually, through the human service zone director, to the ~~board of county commissioners of each county~~state agency a budget containing an estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this chapter.
4. Cooperate with juvenile courts and licensed children's agencies.
5. Administer child and family services under the direction and supervision of the state agency in conformity with title IV-B.
6. Administer federal payments for foster care and adoption assistance under the direction and supervision of the state agency in conformity with title IV-E.

**SECTION 98. AMENDMENT.** Section 50-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-04. Preservation and protection of religious faith.**

The county, human service zone, and state agencies shall preserve and protect the religious faith of children coming under their jurisdiction.

**SECTION 99. AMENDMENT.** Section 50-09-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-06. Application for assistance.**

Application for assistance under this chapter must be made to the ~~county~~human service zone or state 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~~human service zone.

**SECTION 100. AMENDMENT.** Section 50-09-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-07. Investigation by ~~county~~human service zone or state agency.**

~~Whenever~~When a ~~county~~human service zone or state agency shall receivereceives an application for assistance, or assistance has been granted, under this chapter, the ~~human service zone, unless otherwise directed or determined by the state agency,~~ promptly shall make an investigation and record of the circumstances of the applicant, or child, or both, in order to ascertain the facts supporting the application or the granting of assistance and shall obtain such other information as may be required by the rules and regulations of the state agency.

**SECTION 101. AMENDMENT.** Section 50-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-08. Investigations - Power of ~~county agencies~~human service zone, state agency, and employees.**

1. In the investigation of applications under the provisions of this chapter, the ~~county agencies~~human service zone, the state agency, and the officials and employees of such agencies charged with the administration and enforcement of this chapter may:
  - a. Conduct examinations;
  - b. Require the attendance of witnesses and the production of books, records, and papers; and
  - c. Make application to the district court of the county to compel the attendance of witnesses and the production of books, records, and papers.
2. The state agency may request from other state, county, human service zones, and local agencies information deemed necessary to carry out the child support enforcement program. All officers and employees of state, county, and local agencies shall cooperate with the state agency in locating absent parents of children to whom an obligation of support is owed or on whose behalf assistance is being provided and, on request, shall supply the state agency with available information relative to the location, income, social security number, and property holdings of the absent parent, notwithstanding any provision of law making that information confidential. Any person acting under the authority of the state agency who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the child support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.
3. The officers and employees designated by the ~~county agencies~~human service zones or the state agency may administer oaths and affirmations.

**SECTION 102. AMENDMENT.** Subsections 2, 3, and 4 of section 50-09-08.2 of the North Dakota Century Code are amended and reenacted as follows:

2. All information received under this section, if confidential under some other provision of law, is subject to the penalties under section 50-06-15 and is

confidential, except that the information may be used in the administration of any program administered by or under the supervision and direction of the ~~department~~state agency and as specifically authorized by the rules of the ~~department~~state agency. Any information received under this section, if not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota in the possession of the person providing the information, is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. Any person acting under the authority of the state agency who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the child support enforcement program or when otherwise directed by judicial order or otherwise provided by law.

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, a human service zone, 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 section 28-21-05.2 and chapter 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.
4. The officers and employees designated by the ~~county agencies~~human service zones or the state agency may administer oaths and affirmations.

**SECTION 103. AMENDMENT.** Section 50-09-08.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-08.3. Administrative enforcement in interstate cases.**

1. In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and ~~county agencies~~human service zones:
  1. a. Shall use high-volume automated administrative enforcement, to the same extent as used in intrastate cases, in response to a request made by another state to enforce a child support order, and shall promptly report the results of such enforcement procedure to the requesting state;
  2. b. May transmit requests, by electronic or other means, to other states for assistance in cases involving enforcement of child support orders which include information provided and intended to enable the receiving state to compare information about the case to information in the databases of the receiving state, and which constitute a certification:
    - a. (1) Of the amount of arrearages, if any, under the child support order; and

- b. (2) That procedural due process requirements applicable to the case have been complied with;
- 3. c. In cases in which the state agency receives requests made by another state to enforce a child support order, shall not consider that matter a child support case transferred to this state, but may establish a corresponding case based on the other state's request for assistance; and
- 4. d. Shall maintain records of:
  - a. (1) The number of requests for assistance made by other states;
  - b. (2) The number of cases in which this state collected support in response to requests made by other states; and
  - e. (3) The amount of support collected.
- 2. For purposes of this section, the term "high-volume automated administrative enforcement" means, in interstate cases, on request of another state, the identification, by this state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in another state, and the seizure of such assets, by this state, through levy or other appropriate processes.

**SECTION 104. AMENDMENT.** Section 50-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-08.4. Reporting arrearages to credit bureaus.**

1. In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and ~~county agencies~~human service zones, subject to subsection 2, may report periodically to consumer reporting agencies the name of any obligor who owes past-due support and the amount of past-due support owed by the obligor.
2. The state agency may report under subsection 1 only after such an obligor has been provided notice and a reasonable opportunity to contest the accuracy of the statement of the name and amount of overdue support owed by the obligor.
3. For purposes of this section, "consumer reporting agency" means an agency that has furnished evidence, satisfactory to the ~~department~~state agency, that the agency is a consumer reporting agency as defined in section 603(f) of the Fair Credit Reporting Act [15 U.S.C. 1681a(f)].

**SECTION 105. AMENDMENT.** Section 50-09-09 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-09. Award of assistance.**

1. Upon completion of the investigation of an applicant for assistance under this chapter, the ~~county~~human service zone or state agency shall determine, in accordance with the rules of the state agency:

1. a. If the applicant may be provided assistance under the provisions of this chapter;
  2. b. The amount and type of any assistance the applicant may receive; and
  3. c. The date upon which such assistance may begin.
2. In all cases, a statement of the findings of the ~~county agency~~ human service zone forthwith must be transmitted to the state agency.

**SECTION 106. AMENDMENT.** Subsection 1 of section 50-09-14 of the North Dakota Century Code is amended and reenacted as follows:

1. An applicant for or recipient of temporary assistance for needy families under this chapter, aggrieved because of a ~~county~~ human service zone's or state agency's decision or delay in making a decision, may appeal to the state agency in the manner prescribed by the state agency and must be afforded a reasonable notice and opportunity for a fair hearing by the state agency. The state agency, on its own motion, may review individual cases and make determinations which are binding upon the ~~county agency~~ human service zone. An applicant or recipient aggrieved by any such determination, upon request, must be afforded reasonable notice and opportunity for a fair hearing by the state agency. All decisions of the state agency made on an appeal are final and are binding upon and must be complied with by the ~~county agency~~ human service zone.

**SECTION 107. AMENDMENT.** Section 50-09-29 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-29. Requirements for administration of temporary assistance for needy families.**

1. Except as provided in subsections 2, 3, and 4, the ~~department of human services~~ state agency, in its administration of the temporary assistance for needy families program, shall:
  - a. Provide assistance to otherwise eligible women in the third trimester of a pregnancy;
  - b. Except as provided in subdivision c, afford eligible households benefits for no more than sixty months;
  - c. Exempt eligible households from the requirements of subdivision b due to mental or physical disability of a parent or child, mental or physical incapacity of a parent, or other hardship including a parent subject to domestic violence as defined in section 14-07.1-01;
  - d. Unless an exemption, exclusion, or disregard is required by law, count income and assets whenever actually available;
  - e. Except as provided in subdivision j, and as required to allow the state to receive funds from the federal government under title IV-A, provide no benefits to noncitizen immigrants who arrive in the United States after August 21, 1996;

- f. Limit eligibility to households with total available assets, not otherwise exempted or excluded, of a value established by the ~~department~~state agency;
- g. Exclude one motor vehicle of any value in determining eligibility;
- h. Require work activities for all household members not specifically exempted by the ~~department of human services~~state agency for reasons such as mental or physical disability of a parent or child or mental or physical incapacity of a parent;
- i. Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy rate for the state for periods through calendar year 2005;
- j. To the extent required to allow the state to receive funds from the federal government under title IV-A, provide benefits to otherwise eligible noncitizens who are lawfully present in the United States;
- k. Establish and enforce standards against program fraud and abuse;
- l. Provide employment placement programs;
- m. Exempt from assets and income the savings and proportionate matching funds in individual development accounts;
- n. Determine the unemployment rate of adults living in a county that includes Indian reservation lands and a significant population of Indian individuals by using unemployment data provided by job service North Dakota;
- o. When appropriate, require household members to complete high school;
- p. To the extent required to allow the state to receive funds from the federal government under title IV-A, exempt single parents from required work activities;
- q. Provide for sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
- r. Provide for sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
- s. 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;
- t. Require each household to participate in developing an individual employment plan and provide for sanctions, including termination of assistance to the household, if adult or minor household members age sixteen or older fail to cooperate with the terms of the individual employment plan;



- u. Provide pre-pregnancy family planning services that are to be incorporated into the temporary assistance for needy families program assessment;
  - v. Except in cases of pregnancy resulting from rape or incest, not increase the assistance amount to recognize the increase in household size when a child is born to a household member who was a recipient of assistance under this chapter during the probable month of the child's conception;
  - w. Disregard earned income as an incentive allowance for no more than twelve months; and
  - x. Consider, and if determined appropriate, authorize demonstration projects in defined areas which may provide benefits and services that are not identical to benefits and services provided elsewhere.
2. If the secretary of the United States department of health and human services determines that funds otherwise available for the temporary assistance for needy families program in this state must be reduced or eliminated should the ~~department of human services~~state agency administer the program in accordance with any provision of subsection 1, the ~~department of human services~~state agency shall administer the program in a manner that avoids the reduction or loss.
  3. If the ~~department of human services~~state agency determines, subject to the approval of the legislative management, that there is insufficient worker opportunity, due to increases in the unemployment rate, to participate in work activities, the ~~department~~state agency may administer the temporary assistance for needy families program in a manner different than provided in subsection 1.
  4. If the ~~department of human services~~state agency determines, subject to the approval of the legislative management, that administration of the temporary assistance for needy families program, in the manner provided by subsection 1, causes otherwise eligible individuals to become a charge upon the ~~counties~~human service zones under chapter 50-01, the ~~department~~state agency may administer the program in a manner that avoids that result.
  5. The ~~department of human services~~state agency may not deny assistance to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act [21 U.S.C. 802(6)].

**SECTION 108. AMENDMENT.** Section 50-09-30 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-30. Child support agencies exempt from certain fees.**

The recorder and secretary of state may not charge or collect any fee otherwise prescribed by law from a state or ~~county agency~~human service zone engaged in the establishment of paternity or the establishment, modification, or enforcement of child support orders.

<sup>164</sup> **SECTION 109. AMENDMENT.** Subsection 2 of section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

2. "Authorized agent" means the ~~county social~~human service board~~zone~~, unless another entity is designated by the department.

<sup>165</sup> **SECTION 110. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-02. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the ~~county social~~human service board~~zone~~, unless another entity is designated by the department.
2. "Child care center" means an early childhood program licensed to provide early childhood services to nineteen or more children.
3. ~~"County agency" means the county social service board in each of the counties of the state.~~
4. "Department" means the department of human services.
- ~~5.4.~~ "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
- ~~6.5.~~ "Early childhood program" means any program licensed under this chapter where early childhood services are provided for at least two hours a day for three or more days a week.
- ~~7.6.~~ "Early childhood services" means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. 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 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15.1-06-06.
  - d. Child care, preschool, and prekindergarten services provided to children under six years of age 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, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is

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<sup>164</sup> Section 50-11-00.1 was also amended by section 2 of House Bill No. 1099, chapter 405, and section 6 of House Bill No. 1102, chapter 404.

<sup>165</sup> Section 50-11.1-02 was also amended by section 1 of Senate Bill No. 2245, chapter 406.

- attending church services or is engaged in other activities, on 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 children under six years of age 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. Head start and early head start programs that are federally funded and meet federal head start performance standards.
  - j. Child care provided in a medical facility by medical personnel to children who are ill.
- ~~8-7.~~ "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
- ~~9-8.~~ "Group child care" means a child care program licensed to provide early childhood services for thirty or fewer children.
- ~~10-9.~~ "Household member" means an adult living in the private residence out of which a program is operated, regardless of whether the adult is living there permanently or temporarily.
10. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
11. "In-home provider" means any person who provides early childhood services to children in the children's home.
  12. "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
  13. "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
  14. "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.
  15. "Parent" means an individual with the legal relationship of father or mother to a child or an individual who legally stands in place of a father or mother, including a legal guardian or custodian.
  16. "Premises" means the indoor and outdoor areas approved for providing early childhood services.

17. "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
18. "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
19. "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
20. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
21. "Registration document" means a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.
22. "School-age child care" means a child care program licensed to provide early childhood services on a regular basis for nineteen or more children aged five years through eleven years.
23. "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.
24. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
25. "Staff member" means an individual:
  - a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration; or
  - b. Whose activities involve the care, supervision, or guidance of children for or unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

**SECTION 111. AMENDMENT.** Section 50-11.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.2-01. Foster care parent grievance.**

A foster parent who is duly licensed to care for a foster child may object to any decision made by the department of human services or ~~county social~~ human service ~~board~~ zone which substantially affects the foster parent or the needs of the foster child. An objection may be made in the form of a grievance, which must be filed in the county of the foster care parent's residence with the ~~county social~~ human service ~~board~~ zone. The ~~county social~~ human service ~~board~~ zone shall notify foster parents of the grievance procedure and provide them with grievance procedure forms.

**SECTION 112. AMENDMENT.** Section 50-11.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.2-02. Grievance procedure.**

The grievance procedure to be followed by the department of human services, ~~county social~~human service ~~board~~zone, and foster parents is:

1. Any decision made by the department of human services or ~~county social~~human service ~~board~~zone which substantially affects the licensed foster parent or the needs of a foster child must be sent in writing to the foster parents who have been given the responsibility of providing foster care for that child. Nothing herein may be construed to prohibit the department of human services or ~~county social~~human service ~~board~~zone from immediately implementing a decision, when the best interests of the child require such immediate action, as long as notice is given to the foster parent as soon as possible.
2. A foster parent may object to any decision referred to in subsection 1. Upon the filing of a grievance by the foster care parents, the ~~county social~~human service ~~board~~zone shall schedule an informal meeting to be held within ten days of the filing of the grievance. The needs and responsibilities of all interested parties must be discussed at this meeting in an attempt to maintain a continuing relationship which will serve the best interests of the foster child. A written resolution relating to the grievance should be agreed to and signed by both parties.
3. If no written resolution between the parties relating to the grievance is made at the informal meeting, the foster parents may request a formal hearing to be held at the ~~regional foster care~~ conflict-free human service zone office. This meeting must be held within ten working days of the informal meeting unless both parties agree to an extension. The ~~regional foster care~~human service zone director or the director's designee shall provide for a record of this hearing. The ~~regional foster care~~human service zone director or the director's designee shall review all prior contact between the foster care parents and the department of human services or ~~county social service board~~human service zone relating to the grievance. The ~~regional foster care~~human service zone director or the director's designee shall then make a final determination relating to the grievance. The ~~regional foster care~~human service zone director's or the director's designee's findings and conclusions must be sent to the ~~county social~~human service ~~board~~zone and the foster care parents.
4. All decisions ~~of the regional foster care director~~ relating to a grievance under this chapter are final.
5. The department of human services shall adopt rules to carry out the purpose and intent of this section and these rules must be given to the foster parent upon licensing.
6. Denial or revocation of a foster care license may be appealed as provided in chapter 28-32.
7. Nothing herein may be construed to require a grievance proceeding under this chapter, when the department of human services or ~~county social~~human service ~~board~~zone is acting to implement a specific placement decision issued by a court with competent jurisdiction.

<sup>166</sup> **SECTION 113. AMENDMENT.** Section 50-24.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-03.1. Duties of ~~county agency~~human service zone and department.**

In the administration of the medical assistance program, ~~the department or a county agency~~human service zone shall investigate and record the circumstances of each applicant or recipient of assistance, in order to ascertain the facts supporting the application, or the granting of assistance, and obtain such other information as ~~directed by the department or as~~ may be required by the rules and regulations of the department of human services.

<sup>167</sup> **SECTION 114. AMENDMENT.** Section 50-24.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-03.2. Investigations - Power of ~~county agencies~~human service zones, department, and employees.**

1. In the investigation of applications under the provisions of this chapter, the ~~county agencies~~human service zones, the department of human services, and the officials and employees of such agencies charged with the administration and enforcement of this chapter may:
  - a. Conduct examinations;
  - b. Require the attendance of witnesses and the production of books, records, and papers; and
  - c. Make application to the district court of the county to compel the attendance of witnesses and the production of books, records, and papers.
2. The department of human services may request from other state, county, ~~human service zones~~, and local agencies information deemed necessary to carry out the medical support enforcement program. All officers and employees of state, county, and local agencies shall cooperate with the department of human services in locating absent spouses or parents of children to whom an obligation of support is owed or on whose behalf assistance is being provided and, on request, shall supply the department with available information relative to the location, income, social security number, and property holdings of the absent spouse or parent, notwithstanding any provision of law making that information confidential. Any person acting under the authority of the department of human services who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the medical support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.
3. The officers and employees designated by the ~~county agencies~~human service zones or the department of human services may administer oaths and affirmations.

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<sup>166</sup> Section 50-24.1-03.1 was also amended by section 16 of House Bill No. 1115, chapter 408.

<sup>167</sup> Section 50-24.1-03.2 was also amended by section 17 of House Bill No. 1115, chapter 408.

**SECTION 115. AMENDMENT.** Section 50-24.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Aged" means at least sixty-five years of age.
2. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.].
3. "Congregate housing" means housing shared by two or more individuals not related to each other which is not provided in an institution.
4. "~~County agency~~" ~~means the county social service board.~~
5. "Department" means the department of human services.
- 6.5. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.].
- 7.6. "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. (1) Has applied for and is eligible to receive and receives benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and who has applied for and is receiving benefits, if the individual is eligible to receive benefits, under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.]; or  
(2) Has applied for and is eligible to receive and receives benefits under section 50-24.1-37 for long-term services and supports pursuant to an asset test established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and section 50-24.1-02;
  - c. Meets the requirements of section 23-09.3-08.1;
  - d. 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; 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

- e. Is determined to be eligible pursuant to rules adopted by the department.
7. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
  8. "Institution" means a facility licensed under chapter 23-09.3.
  9. "Living independently" includes living in congregate housing. The term does not include living in an institution.
  10. "Personal needs allowance" means an amount retained by the eligible beneficiary to cover the costs of clothing and other personal needs.
  11. "Proprietor" means an individual responsible for day-to-day administration and management of a facility.
  12. "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.
  13. "Would be eligible to receive the cash benefits except for income" refers to an individual whose countable income, less the cost of necessary remedial care that may be provided under this chapter, does not exceed an amount equal to the cash benefit under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.] which the individual would receive if the individual had no income, plus the amount allowed as the personal needs allowance.

**SECTION 116. AMENDMENT.** Subsection 1 of section 50-24.5-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Administer aid to vulnerable aged, blind, and disabled persons and supervise and direct ~~county agencies~~ human service zones in the administration of aid to vulnerable aged, blind, and disabled persons.

**SECTION 117. AMENDMENT.** Section 50-24.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-03. Powers and duties of ~~county agency~~ human service zone.**

Each ~~county agency~~ human service zone, ~~unless otherwise directed or determined by the department~~, shall:

1. Administer aid to aged, blind, and disabled persons at the ~~county~~ human service zone level under the direction and supervision of the department, pursuant to state requirements.
2. Provide the services described in this chapter.
3. Determine eligibility for benefits under this chapter and periodically redetermine eligibility of persons receiving benefits pursuant to this chapter.
4. Provide case management services to eligible beneficiaries.



5. Conduct initial and ongoing functional assessments of applicants in cooperation with basic care facilities.
6. Cooperate with any other ~~county agency~~ human service zone to assure the conduct of initial and ongoing functional assessments and determinations of eligibility with respect to any applicant or eligible beneficiary who is physically present in a ~~county~~ human service zone other than the ~~county~~ human service zone in which the applicant or eligible beneficiary is a resident for purposes of chapter 50-01.

**SECTION 118. AMENDMENT.** Section 50-24.5-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-07. Residency.**

For purposes of this chapter:

1. A person is a resident of this state if:
  - a. The person is not living in an institution and is living in this state:
    - (1) With intent to remain in this state permanently or for an indefinite period; or
    - (2) Without intent if the person is incapable of stating intent.
  - b. The person is living in an institution outside this state and was receiving a benefit under chapter 50-01 on January 1, 1995.
  - c. The person was placed in an out-of-state institution by a ~~county agency~~ human service zone or the department while the person was incapable of indicating intent.
  - d. The person is living in an in-state institution, has lived in that institution for at least thirty days, and was not placed in that institution by another state. A person placed in an institution by another state is a resident of the state making the placement. Any action beyond providing information to the person and the person's family constitutes arranging or making a state placement. However, the following actions do not constitute state placement:
    - (1) Providing basic information about this chapter and information about the availability of this chapter; or
    - (2) Assisting a person in locating an institution in this state, if the person is capable of indicating intent and independently decides to move.
2. A person who is a resident of this state is a resident of the ~~county~~ human service zone in which the person is a resident for purposes of chapter 50-01.

**SECTION 119. AMENDMENT.** Section 50-24.5-09 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-09. Responsibility for expenditures.**

~~Except as otherwise specifically provided in section 50-03-08,~~  
expendituresExpenditures required under this chapter are the responsibility of the state of North Dakota.

**SECTION 120. AMENDMENT.** Section 50-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.7-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Aged" means at least sixty-five years of age.
2. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.].
3. "County agency" means the county social service board.
4. "Department" means the department of human services.
- ~~5-4.~~ "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.].
- ~~6-5.~~ "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.], and who has applied for and is receiving benefits, if the individual is eligible to receive benefits, under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.];
  - 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; or
    - (2) Is impaired in three of the four instrumental activities of daily living of preparing meals, doing homework, taking medicine, and doing laundry;
  - d. Has 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 titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.] which the individual would receive if the individual had no income, plus the personal needs allowance;
  - e. Has impairments that are not the result of an intellectual disability; and

f. Is determined to be eligible pursuant to rules adopted by the department.

- 7-6. "Family home care" means the provision of room, board, supervisory care, and personal services to an eligible elderly or disabled person by the spouse or by one of the following relatives, or the current or former spouse of one of the following relatives, of the elderly or disabled person: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew. The family home care provider need not be present in the home on a twenty-four-hour basis if the welfare and safety of the client is maintained.
7. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
8. "Qualified service provider" means a ~~county agency~~ human service zone or independent contractor who agrees to meet standards for services and operations established by the department.
9. "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.

**SECTION 121. AMENDMENT.** Subsection 1 of section 50-24.7-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The department shall administer expanded service payments for elderly and disabled and supervise and direct ~~county agencies~~ human service zones in the administration of expanded service payments for elderly and disabled.

**SECTION 122. AMENDMENT.** Section 50-24.7-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.7-03. Powers and duties of ~~county agency~~ human service zone.**

Each ~~county agency~~ human service zone, unless otherwise directed or determined by the department, shall:

1. Administer expanded service payments for elderly and disabled at the ~~county~~ human service zone level under the direction and supervision of the department, pursuant to state requirements.
2. Provide the services described in this chapter. The ~~county agency~~ human service zone may contract with a qualified service provider in the provision of those services.
3. Determine eligibility for benefits under this chapter and periodically redetermine eligibility of persons receiving benefits pursuant to this chapter.
4. Provide case management services to eligible beneficiaries.
5. Conduct initial and ongoing functional assessments of applicants.

**SECTION 123. AMENDMENT.** Section 50-24.7-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.7-06. Responsibility for expenditures.**

~~Except as otherwise specifically provided in section 50-03-08, expenditures~~Expenditures required under this chapter are the responsibility of the state of North Dakota.

<sup>168</sup> **SECTION 124. AMENDMENT.** Subsections 6 and 11 of section 50-25.1-02 of the North Dakota Century Code are amended and reenacted as follows:

6. "Authorized agent" means the ~~county social~~human service board~~zone~~, unless another entity is designated by the department.
11. "Local child protection team" means a multidisciplinary team consisting of the designee of the ~~director of the regional human service center~~human service zone director who shall serve as presiding officer, together with such other representatives as that director might select for the team ~~with the consent of the director of the county social service board~~. All team members, at the time of their selection and thereafter, must be staff members of the public or private agencies they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three members. The department shall~~may~~ coordinate the organization of local child protection teams on a ~~county or multicounty~~human service zone basis.

**SECTION 125. AMENDMENT.** Section 50-25.1-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-04.3. Child fatality review panel - Duties.**

The child fatality review panel shall meet at least semiannually to review the deaths and near deaths of all minors which occurred in the state during the preceding six months and to identify trends or patterns in the deaths and near deaths of minors. The panel may review near deaths alleged to have resulted only from child abuse and neglect. The panel shall promote:

1. Interagency communication for the management of child death cases and for the management of future nonfatal cases.
2. Effective criminal, civil, and social intervention for families with fatalities.
3. Intervention and counseling of surviving and at-risk siblings, and offer the same.
4. Interagency use of cases to audit the total health and social service systems and to minimize misclassification of cause of death.
5. Evaluation of the impact of specific risk factors including substance abuse, domestic violence, and prior child abuse.
6. Interagency services to high-risk families.

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<sup>168</sup> Section 50-25.1-02 was also amended by section 1 of House Bill No. 1108, chapter 416, section 6 of House Bill No. 1520, chapter 256, section 8 of Senate Bill No. 2245, chapter 406, and section 3 of Senate Bill No. 2273, chapter 108.

7. Data collection for surveillance of deaths and the study of categories of causes of death.
8. The use of media to educate the public about child abuse prevention.
9. Intercounty, interhuman service zones, and interstate communications regarding child death.
10. Use of local child protection team members as local child fatality review panelists.
11. Information that apprises a parent or guardian of the parent's or guardian's rights and the procedures taken after the death of a child.

<sup>169</sup> **SECTION 126. AMENDMENT.** Section 50-25.2-14 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.2-14. Implementation contingent upon appropriation.**

The department and ~~county social~~ human service boards~~zones~~ are not required to implement or enforce this chapter with respect to any zone, region, area, or county of this state if the legislative assembly does not provide an appropriation to support the implementation and enforcement of this chapter within that zone, region, area, or county.

<sup>170</sup> **SECTION 127. AMENDMENT.** Section 50-29-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-29-01. Definitions.**

As used in this chapter:

1. "Children's health insurance program" means a program to provide health assistance to low-income children funded through title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].
2. ~~"County agency" means the county social service board.~~
3. ~~"Department" means the department of human services.~~
3. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
4. "Plan" means the children's health insurance program state plan.
5. "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) section 9902(2) of title 42 of the United States Code, applicable to a family of the size involved.

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<sup>169</sup> Section 50-25.2-14 was also amended by section 8 of House Bill No. 1107, chapter 418.

<sup>170</sup> Section 50-29-01 was also amended by section 1 of Senate Bill No. 2106, chapter 420.

<sup>171</sup> **SECTION 128. AMENDMENT.** Section 50-29-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-29-02. Duties of the department.**

1. The department shall prepare, submit, and implement the plan that includes determinations of eligibility, based on modified adjusted gross income methodologies as required in 42 U.S.C. 1396a(e)(14) section 1396a(e)(14) of the United States Code;
2. Supervise the administration of the children's health insurance program throughout this state;
3. Take action, give directions, and adopt rules as may be necessary or desirable to carry out the provisions of this chapter;
4. After federal approval of the plan, apply for a federal waiver allowing plan coverage for a family through an employer-based insurance policy if an employer-based family insurance policy is more cost-effective than the traditional plan coverage for the children;
5. Report annually to the legislative council and describe enrollment statistics and costs associated with the plan; and
6. ~~Reimburse counties for expenses incurred in the administration of the children's health insurance program at rates based upon all counties' total administrative costs; and~~
7. Administer all funds appropriated or made available to the department for the purpose of carrying out the provisions of this chapter.

<sup>172</sup> **SECTION 129. AMENDMENT.** Section 50-29-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-29-03. Duties of ~~county agency~~human service zone.**

In the administration of the plan, unless the department otherwise establishes eligibility, the ~~county agency~~human service zone shall:

1. Administer the plan under the direction and supervision of the department; and
2. Make an investigation and record the circumstances of each applicant, obtaining information as may be required by the department.

**SECTION 130.** Chapter 50-35 of the North Dakota Century Code is created and enacted as follows:

**50-35-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

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<sup>171</sup> Section 50-29-02 was also amended by section 2 of Senate Bill No. 2106, chapter 420.

<sup>172</sup> Section 50-29-03 was also amended by section 3 of Senate Bill No. 2106, chapter 420.

1. "Department" means the department of human services.
2. "Director" means the executive director of the department or the executive director's designee.
3. "Economic assistance" means those primary economic assistance programs that need to be accessible to all citizens of the state through a human service zone, including:
  - a. Temporary assistance for needy families;
  - b. Employment and training programs;
  - c. Child care assistance programs;
  - d. Medical assistance, including early periodic screening, diagnosis, and treatment;
  - e. Supplemental nutrition assistance programs, including employment and training programs;
  - f. Refugee assistance programs;
  - g. Basic care services;
  - h. Energy assistance programs; and
  - i. Information and referral.
4. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
5. "Human service zone director" means a human service zone team member who oversees the human service zone's operation and budget and serves as presiding officer of the human service zone board.
6. "Human services" means:
  - a. A service or assistance provided to an individual or an individual's family in need of services or assistance, including child welfare services, economic assistance programs, medical service programs, and aging service programs, to assist the individual or the individual's family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing.
  - b. A service or assistance provided, administered, or supervised by the department in accordance with chapter 50-06.
  - c. Licensing duties as administered or supervised by the department or delegated by the department to a human service zone.
7. "Indirect costs" means salaries, benefits, and operating costs incurred in providing those goods and services to support human services that are generally available for the common benefit of multiple county agencies. These costs include legal representation; facilities and related costs, such as utilities

and maintenance; administrative support, including payroll, accounting, banking, and coordination; information technology support and equipment; and miscellaneous goods and services, such as transportation, supplies, insurance coverage, phone, and mail services.

**50-35-02. State-paid human services - Application - Study.**

1. The department shall administer a statewide program for state funding of staffing and administrative costs related to the administration of human services.
2. Payments must be distributed to human service zones and the department pursuant to the formula in section 50-35-04, with the first formula payment distributions commencing in January 2020.
3. Human service zones shall cooperate with the department to adopt administrative and operational cost-savings methodologies and determine options for consolidations. Human service zones shall implement the administrative and operational cost-savings methodologies and consolidations.
4. During the 2019-20 interim, the department shall consider options for allowing a human service zone to opt in to state employment. The study must identify under what conditions a transition to state employment may be desirable for a human service zone; outline the governance process for choosing to opt in to state employment, including a description of the role of the human service zone board, county commissions, and the department; and include a template and potential timeline for any zone choosing to make the transition to state employment.

**50-35-03. Formula payments - Distributions by the director.**

1. The director shall calculate the total formula payment for each human service zone pursuant to section 50-35-04 for each calendar year. The director shall notify each human service zone of the amount of that zone's formula payment for calendar year 2020, before December 16, 2019, and for calendar year 2021 and the following years thereafter, before June second of the previous year. The director may amend and modify each human service zone's formula payment. If the director amends and modifies a human service zone's formula payment, the human service zone director must be notified within thirty days of amendment or modification.
2. The director shall distribute fifty percent of the amount of each human service zone's formula payment determined under subsection 1, within the limits of legislative appropriation, before January eleventh.
3. By June first of each year, excluding calendar year 2019, the director shall recalculate the total formula payment for each human service zone pursuant to section 50-35-04 for the current calendar year.
4. For payments disbursed after calendar year 2020, the director shall subtract from a human service zone's June fifteenth disbursement any amount exceeding the limitation under section 50-35-05.
5. The director shall calculate the total formula payment for the department pursuant to section 50-35-04.



**50-35-04. Calculation of formula payment - Expenditures.**

1. The director shall calculate the total formula payment for each human service zone. The calculation must be based on the human service zone's most recently available data on historical cost and income, and may include:
  - a. Other factors outlined in subsection 3;
  - b. The human service zone director's proposed budget for the human service zone which may include expansion of scope of human services to include kinship care services and payments and services in response to the federal Family First Prevention Services Act as part of the Bipartisan Budget Act of 2018 [Pub. L. 115-123];
  - c. Compensation equity and salary increases. The department may limit future salary increases for human service zone team members who received a salary increase from the county commissioners or county social service board for calendar year 2018 or 2019 which was above the salary increase provided by the legislative assembly for state employees or who receive a wage above equitable compensation; and
  - d. Current and future duties of and services offered by the human service zone and department.
2. The director shall authorize expenditures from the human service finance fund to reimburse the department for the department's costs of providing human services that historically have been provided by a county, human service zone, or a new service or program based on federal or state law. The department may authorize expenditures from the human service finance fund to reimburse the department for transitional costs incurred for implementing the statewide program for state funding.
3. The director may recalculate and adjust each human service zone's formula payment biannually based on pertinent factors, which include actual expenditures over the previous or current payment period, current costs, offered services, need, income, performance of duties directed or assigned and supervised by the department, and caseload. If the director amends and modifies a human service zone's formula payment, the human service zone director must be notified within thirty days of amendment or modification. The pending authority of the human service zone must be increased based on the approved, adjusted, or modified formula payment.
4. The director, during the period between January 1, 2020, and December 31, 2021, shall calculate payment for indirect costs according to a formula established by the department, during the period between January 1, 2020, and December 31, 2021. The total payment by the department for reimbursement of indirect costs incurred to support human services may not be less than the prorated amount paid to counties for this purpose in state fiscal year 2018 as identified in the indirect cost plan, unless a cost reduction or cost-savings is achieved by the county.

**50-35-05. Human service zone human services fund - Establishment - Fund balance limitations.**

1. Each human service zone in this state shall maintain a fund to be known as the human service zone human services fund. All expenditures by the human

service zone for human services must be paid from the human service zone human services fund. If, due to unforeseen or other extenuating circumstances, a human service zone's formula distribution payment, the county's cost allocation of indirect costs, and balance of moneys carried over pursuant to subsection 2 are not sufficient to meet the expenses of that human service zone, the director may approve a transfer from the human service finance fund to the human service zone human services fund.

2. The balance of moneys in the human service zone human services fund on January first of each year, after calendar year 2020, may not exceed five hundred thousand dollars for a human service zone that had annual expenditures of two million dollars or greater in calendar year 2020 or one hundred thousand dollars for a human service zone that had annual expenditures of less than two million dollars in calendar year 2020. The balance of moneys carried over must be used for the administration of human services within that human service zone as approved by the human service zone director. The human service zone human services fund is not subject to any other charges and is exempt from section 21-02-08.

#### **50-35-06. Human service zone human services fund - Transfer.**

1. The county treasurer shall transfer the full amount of the service area human services fund to the human service zone human services fund on January 1, 2020. If on January 1, 2021, and each year thereafter, the balance of a human service zone human services fund exceeds the limitations in section 50-35-05, the director shall reduce the human service zone's formula payment as directed in subsection 4 of section 50-35-03.
2. The county may not transfer any funds from the service area human services fund until January 1, 2020, unless approved by the department.

#### **50-35-07. Human service finance fund.**

The human service finance fund is a special fund in the state treasury. Moneys in the fund may be used, subject to legislative appropriation, for the provision of formula payments to human service zones and payments to the department pursuant to this chapter.

**SECTION 131. AMENDMENT.** Section 54-46-13 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-46-13. Rules for state and ~~county social~~human service zone records - Administrator to adopt.**

The administrator shall adopt rules in accordance with chapter 28-32 for state and ~~county social~~human service zone records. The rules adopted by the administrator must be consistent with records retention requirements imposed by federal law with respect to those records. The administrator, prior to adoption, amendment, or repeal of rules concerning state and ~~county social~~human service zone records, shall consult with the executive director of the department of human services.

**SECTION 132. AMENDMENT.** Subsection 3 of section 57-15-01.1 of the North Dakota Century Code is amended and reenacted as follows:

3. A taxing district may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the

levy limitation under this section, the dollar amount levied in the base year must be:

- a. Reduced by an amount equal to the sum determined by application of the base year's calculated mill rate for that taxing district to the final base year taxable valuation of any taxable property and property exempt by local discretion or charitable status which is not included in the taxing district for the budget year but was included in the taxing district for the base year.
- b. Increased by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final budget year taxable valuation of any taxable property or property exempt by local discretion or charitable status which was not included in the taxing district for the base year but which is included in the taxing district for the budget year.
- c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district. For purposes of this subdivision, an expired temporary mill levy increase does not include a school district general fund mill rate exceeding one hundred ten mills which has expired or has not received approval of electors for an extension under subsection 2 of section 57-64-03.
- d. Reduced by the amount of state aid under chapter 15.1-27, which is determined by multiplying the budget year taxable valuation of the school district by the lesser of the base year mill rate of the school district minus sixty mills or fifty mills, if the base year is a taxable year before 2013.
- e. ~~Increased by the highest amount received by the taxing district in a taxable year under chapter 50-34.~~

<sup>173</sup> **SECTION 133. 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. A county supporting an airport or airport authority may levy a tax not exceeding four mills in accordance with section 2-06-15.
2. A county levying a tax for extension work as provided in section 11-38-01 may levy a tax not exceeding two mills and if a majority of the electors of the county have approved additional levy authority under section 11-38-01, the county may levy a voter-approved tax not exceeding an additional tax of two mills.
3. A county 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 a levy limit increase

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<sup>173</sup> Section 57-15-06.7 was also amended by section 3 of House Bill No. 1268, chapter 213.

as provided in section 11-11-53 shall approve, the tax levy limitation may be increased to not exceeding three-quarters of one mill.

4. 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 ten years at a mill rate not exceeding five mills.
5. A county levying a tax for county roads and bridges as provided in section 24-05-01 may levy a tax at a tax rate not exceeding ten mills. When authorized by a majority of the qualified electors voting upon the question at a primary or general election in the county, the county commissioners may levy and collect an additional tax for road and bridge purposes as provided in section 24-05-01, not exceeding a combined additional tax rate of twenty mills.
6. 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.
7. 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 two mills.
8. A county levying a tax for capital projects under section 57-15-06.6 may levy a tax not exceeding ten mills. When authorized by a majority of the qualified electors voting upon the question of a specific capital project or projects at a primary or general election in the county, the county commissioners may levy and collect an additional voter-approved tax for capital projects under section 57-15-06.6 not exceeding a tax rate of ten mills per dollar of the taxable valuation of property in the county. After January 1, 2015, approval or reauthorization by electors of increased levy authority under this subsection may not be effective for more than ten taxable years. Any voter-approved levy in excess of ten mills for the purposes specified in section 57-15-06.6 approved by the electors before January 1, 2015, remains effective through 2024 or the period of time for which it was approved by the electors, whichever is less, under the provisions of law in effect at the time it was approved.
9. A county levying a tax for emergency purposes as provided in section 57-15-28 may levy a tax not exceeding two mills in a county with a population of thirty thousand or more, four mills in a county with a population under thirty thousand but more than five thousand, or six mills in a county with a population of five thousand or fewer.
10. A county levying a tax for county emergency medical service according to section 57-15-50 may levy a tax not exceeding ten mills.
11. A county levying a tax for weed control as provided in section 4.1-47-14 may levy a tax not exceeding four mills.
12. 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.
13. Tax levies made for paying the principal and interest on any obligations of the county evidenced by the issuance of bonds.

14. A county levying a tax for a job development authority as provided in section 11-11.1-04 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 and the total of the county and city levies exceeds four mills, the county tax levy within the city levying under subsection 12 of section 57-15-10 must be reduced so the total levy in the city does not exceed four mills.
15. ~~A county levying an annual tax for human services purposes as provided in section 50-06.2-05 may levy a tax not exceeding the lesser of twenty mills or the number of mills determined by dividing the county budget limitation in dollars as determined under section 11-23-01 by the taxable valuation of the county.~~
16. A levy for an extraordinary expenditure under section 11-11-24 approved by the electors of the county before January 1, 2015, may continue to be levied and collected under provisions of law in effect when the levy was approved and for the term it was approved by the electors. When the levy authority for an extraordinary expenditure ends under this subsection, the fund must be closed out and any unobligated balance in the fund must be transferred to the county general fund.
- ~~17.~~ 16. Levies dedicated under section 57-15-59 before January 1, 2015, for lease payments may be continued to be levied and collected for the duration of the lease. When the levy authority for lease payments ends under this subsection, the fund must be closed out and any unobligated balance in the fund must be transferred to the county general fund. A lease for county facilities effective after December 31, 2014, is subject to the capital projects levy limitations of section 57-15-06.6.

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 134. AMENDMENT.** Section 57-20-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-07.1. County treasurer to mail real estate tax statement - Contents of statement.**

1. On or before December twenty-sixth of each year, the county treasurer shall mail a real estate tax statement to the owner of each parcel of real property at the owner's last-known address. The form of the real estate tax statement to be used in every county must be prescribed and approved for use by the tax commissioner. The statement must be provided in a manner that allows the taxpayer to retain a printed record of the obligation for payment of taxes and special assessments as provided in the statement. If a parcel of real property is owned by more than one individual, the county treasurer shall send only one statement to one of the owners of that property. Additional copies of the tax statement will be sent to the other owners upon their request and the furnishing of their names and addresses to the county treasurer. The tax statement must:
  - a. Include a dollar valuation of the true and full value as defined by law of the property and the total mill levy applicable.

- b. Include, or be accompanied by a separate sheet, with three columns showing, for the taxable year to which the tax statement applies and the two immediately preceding taxable years, the property tax levy in dollars against the parcel by the county and school district and any city or township that levied taxes against the parcel.
- c. Provide information identifying the property tax savings provided by the state of North Dakota. The tax statement must include a line item that is entitled "legislative tax relief" and identifies the dollar amount of property tax savings realized by the taxpayer under chapter 50-34 for taxable years 2017 and 2018 and under before 2019, chapter 50-35 for taxable years after 2018, and chapter 15.1-27.

(1) For purposes of this subdivision, legislative tax relief under chapter 15.1-27 is determined by multiplying the taxable value for the taxable year for each parcel shown on the tax statement by the number of mills of mill levy reduction grant under chapter 57-64 for the 2012 taxable year plus the number of mills determined by subtracting from the 2012 taxable year mill rate of the school district in which the parcel is located the lesser of:

(1) (a) Fifty mills; or

(2) (b) The 2012 taxable year mill rate of the school district minus sixty mills.

(2) Legislative tax relief under chapter 50-35 is determined by multiplying the taxable value for the taxable year for each parcel shown on the tax statement by the number of mills of relief determined by dividing the amount calculated in subsection 1 of section 50-35-03 for a human service zone by the taxable value of taxable property in the zone for the taxable year.

- 2. Failure of an owner to receive a statement will not relieve that owner of liability, nor extend the discount privilege past the February fifteenth deadline.

**SECTION 135. AMENDMENT.** Subsection 3 of section 57-20-07.3 of the North Dakota Century Code is amended and reenacted as follows:

- 3. The amount of credit is determined by multiplying the company's assessed tax by a fraction, the numerator of which is the total of all formula payments calculated for the subsequent calendar year under section ~~50-34-03~~50-35-03 and the denominator of which is the total statewide ad valorem property tax levied in the prior taxable year.

**SECTION 136. AMENDMENT.** Subdivision b of subsection 1 of section 57-55-10 of the North Dakota Century Code is amended and reenacted as follows:

- b. If it is owned and occupied by a welfare recipient, provided the mobile home is not permanently attached to the land and classified as real property. For the purposes of this subdivision, "welfare recipient" means any person who is certified to the county director of tax equalization by the

~~county social human service board zone~~ as receiving the major portion of income from any state or federal public assistance program.

<sup>174</sup> **SECTION 137. AMENDMENT.** Subsection 16 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.
- (2) Aliens.
- (3) ~~County Human service zone~~ general assistance workers, except those who are engaged in repaying to ~~counties human service zones or the department of human services~~ moneys the ~~counties human service zones or the department of human services~~ have been compelled by statute to expend for ~~county~~ general assistance.
- (4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

- (1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.
- (2) An individual who is engaged in an illegal enterprise or occupation.
- (3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:
  - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.

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<sup>174</sup> Section 65-01-02 was also amended by section 1 of House Bill No. 1072, chapter 524, section 1 of House Bill No. 1073, chapter 525, and section 2 of Senate Bill No. 2184, chapter 523.

- (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
  - (c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.
- (7) An employer.

**SECTION 138. REPEAL.** Chapter 50-03 and sections 50-06-20.1 and 50-06.2-05 of the North Dakota Century Code are repealed.

<sup>175</sup> **SECTION 139. REPEAL.** Sections 50-01-03, 50-01.1-02.1, 50-01.2-03.1, 50-01.2-06, 50-06-05.7, 50-06-06.1, and 50-25.1-06.1 of the North Dakota Century Code are repealed.

**SECTION 140. REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY - DEPARTMENT OF HUMAN SERVICES.** The department of human services shall submit to the appropriations committees of the sixty-seventh legislative assembly a report with metrics that include the cost per unit of work for transactional services or caseloads and other performance metrics as available. The department of human services shall submit trends in these metrics for selected programs or geographies that have undergone concentrated process improvement efforts under pilot projects or otherwise in collaboration with the department.

**SECTION 141. CONTINGENT APPROPRIATION AND AUTHORIZATION.** Subject to the availability of funds, the department of human services may adjust or increase full-time equivalent positions of the department of human services in order to carry out the powers and duties of the department of human services as follows:

1. Up to thirty-three full-time equivalent positions included in Senate Bill No. 2012, as approved by the sixty-sixth legislative assembly, may be adjusted or increased only if one or more human service zones transfers powers and duties associated with one or more programs, services, or functions from a human service zone to the department of human services.
2. Any positions added to the department of human services under this section would be position transfers from the human service zone and may not result in:

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<sup>175</sup> Section 50-25.1-06.1 was amended by section 6 of House Bill No. 1108, chapter 416.



- a. A net addition of positions delivering human services programs, services, or functions under the appropriation provided in Senate Bill No. 2012, as approved by the sixty-sixth legislative assembly.
  - b. An increase in county social services employees or human service zone team members delivering human services programs, services, or functions.
3. The funds for salaries, wages, and operating costs associated with any position added to the department of human services under this section must be paid for with the line items of salaries and wages and operating costs authorized in Senate Bill No. 2012, as approved by the sixty-sixth legislative assembly.
  4. The department of human services shall notify the office of management and budget and report to the budget section after June 30, 2020, if one or more full-time equivalent positions are authorized under this section of this Act. The department of human services shall include in the notification and report the amount of salaries, wages, and operating costs withheld from human service zone formula payments because of a transfer of powers and duties and the corresponding full-time equivalent positions.
  5. The department of human services shall notify the appropriations committees of the sixty-seventh legislative assembly of any full-time equivalent positions transferred pursuant to this section.
  6. Of the thirty-three full-time equivalent positions in this section, the department of human services may adjust or increase full-time equivalent positions as transfers from one or more human service zones up to:
    - a. Fourteen full-time equivalent positions if the department of human services assumes powers and duties associated with foster care assistance or IV-E eligibility determination.
    - b. Sixteen full-time equivalent positions if the department of human services assumes powers and duties associated with long-term care eligibility determination.
    - c. Three full-time equivalent positions to serve as quality control to the human service zones.
  7. Of the thirty-three full-time equivalent positions in this section, the department of human services may adjust or increase full-time equivalent positions as transfers from one or more human service zones for management support to administer the powers and duties transferred.

#### **SECTION 142. TRANSFER OF EMPLOYEES - HEALTH INSURANCE COVERAGE.**

1. The following full-time equivalent positions of a county or human service zone become full-time equivalent positions of the department of human services upon notice of transfer to the human service zone director or county commissioners:

- a. Four full-time equivalent positions to serve as human service zone operational directors to provide supervision and technical assistance to the human service zones.
  - b. Twenty-seven full-time equivalent child care licensing positions.
  - c. Two full-time equivalent adoption assistance eligibility determination and adoption case management or related administration positions.
  - d. Sixty-four full-time equivalent home and community-based services case management positions.
  - e. Three full-time equivalent positions to assist with the human service zones, human service zone plans, or formula payments, or to relieve human service zones of miscellaneous duties, including estate recovery.
  - f. Seven full-time equivalent positions to serve as quality control to the human service zones.
2. Of the one hundred seven full-time equivalent positions in this section, the department of human services may adjust or increase full-time equivalent positions as transfers from one or more host counties for management support to administer the powers and duties transferred.
  3. Any employee who becomes a state employee under this section or section 141 is entitled to receive a salary in an amount not less than the salary received as an employee of the county or host county.
  4. The department may limit future salary increases for an employee who is transferred under this section or section 141 who received a salary increase from their former county commissioners or county social service board for the calendar years 2018 or 2019 above the salary increase provided by the legislative assembly for state employees or who receive a wage above equitable compensation.
  5. Each year of county or host county employment of an employee who is transferred under this section or section 141 will be considered a year of state employment for purposes of section 54-06-14.
  6. Before the transfer of the full-time equivalent position from the county or host county to the department of human services, the county or host county shall pay the employer's share of any premium that is necessary to continue any existing health insurance coverage for an employee who is transferred under this section for one month after the effective date of this transfer.
  7. Any equipment, including technology-related equipment, furnishings, and supplies in the control and custody of a county or human service zone on the effective date of an employment transfer from the county or host county to the department of human services under this section or section 141, may be transferred to the control and custody of the department of human services if requested.
  8. Any position added to the department of human services under this section would be position transfers from the human service zone and may not result in:

- a. A net addition of positions delivering human services programs, services, or functions under the appropriation provided in Senate Bill No. 2012, as approved by the sixty-sixth legislative assembly.
- b. An increase in county social services employees or human service zone team members delivering human services programs, services, or functions.

**SECTION 143. EFFECTIVE DATE.** Sections 64 and 142 of this Act become effective on August 1, 2019. Sections 132, 133, 134, and 135 are effective for taxable years beginning after December 31, 2018. Sections 1, 3 through 13, 15, 16 through 25, 27 through 30, 32, 33, 35, 37 through 60, 65 through 74, 76 through 82, 84 through 91, 93 through 129, 131, 136, 137, 139, 140, and 141 of this Act become effective on January 1, 2020.

**SECTION 144. EXPIRATION DATE.** Sections 14, 26, 31, 34, and 36 of this Act are effective through December 31, 2019, and after that date are ineffective.

**SECTION 145. EMERGENCY.** Section 130 of this Act is declared to be an emergency measure.

Approved April 17, 2019

Filed April 18, 2019

## CHAPTER 392

### SENATE BILL NO. 2198

(Senators J. Lee, Anderson, Mathern)  
(Representatives Roers Jones, Schreiber-Beck)

AN ACT to amend and reenact sections 23-01-44 and 50-06-01 of the North Dakota Century Code, relating to duties of the department of human services behavioral health division.

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

<sup>176</sup> **SECTION 1. AMENDMENT.** Section 23-01-44 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-01-44. Syringe or needle exchange program - Authorization.**

1. As used in this section:
  - a. "Program" means a syringe exchange program established and operated under this section.
  - b. "Qualified entity" means:
    - (1) A local health department;
    - (2) A city that operates a program within the boundaries of the city; or
    - (3) An organization that has been authorized to operate a program by the state department of health, the board of county commissioners, or the governing body for the operation of a program within the boundaries of the city.
2. The state department of health, in collaboration with the department of human services behavioral health division, shall design a syringe exchange program. The state department of health shall administer the program.
3. The state department of health may authorize a qualified entity to operate a program in a county if:
  - a. The area to be served is at risk of an increase or potential increase in prevalence of viral hepatitis or human immunodeficiency virus;
  - b. A syringe exchange program is medically appropriate as part of a comprehensive public health response; and
  - c. The qualified entity conducted a public hearing and submitted a report of the findings and an administration plan for the program to the state health officer.

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<sup>176</sup> Section 23-01-44 was also amended by section 5 of Senate Bill No. 2240, chapter 225.

- 3-4. A qualified entity operating a program under this chapter shall:
- a. Register the program annually in the manner prescribed by the state department of health;
  - b. Have a pharmacist, physician, or advanced practice registered nurse who is licensed in the state to provide oversight for the program;
  - c. Store and dispose of all syringes and needles collected in a safe and legal manner;
  - d. Provide education and training on drug overdose response and treatment, including the administration of an overdose reversal medication;
  - e. Provide education, referral, and linkage to human immunodeficiency virus, viral hepatitis, and sexually transmitted disease prevention, treatment, and care services;
  - f. Provide drug addiction treatment information, and referrals to drug treatment programs, including programs in the local area and programs that offer medication-assisted treatment that includes a federal food and drug administration approved long-acting, non-addictive medication for the treatment of opioid or alcohol dependence;
  - g. Provide syringe, needle, and injection supply distribution and collection without collecting or recording personally identifiable information;
  - h. Operate in a manner consistent with public health and safety; and
  - i. Ensure the program is medically appropriate and part of a comprehensive public health response.
- 4-5. The state department of health may terminate a program for failure to comply with any of the provisions in this section.
- 5-6. A state agency may not provide general fund monies to a program to purchase or otherwise acquire hypodermic syringes, needles, or injection supplies for a program under this section.
- 6-7. A law enforcement officer may not stop, search, or seize an individual based on the individual's participation in a program under this section. Syringes and needles appropriately collected under this section are not considered drug paraphernalia as provided in chapter 19-03.4 or possession of a controlled substance under section 19-03.1-23.
- 7-8. Each program shall file a semiannual report with the state department of health containing the following information listed on a daily basis and by location, identified by the postal zip code, where the program distributed and collected syringes and needles:
- a. The number of individuals served;
  - b. The number of syringes and needles collected;
  - c. The number of syringes and needles distributed; and

d. Any additional information requested by the state department of health.

<sup>177</sup> **SECTION 2. AMENDMENT.** Section 50-06-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-01. Definition.**

As used in this chapter, unless the context otherwise requires:

1. "Behavioral health" means the planning and implementation of preventive, consultative, diagnostic, treatment, crisis intervention, ~~and~~ rehabilitative, and suicide prevention services for individuals with mental, emotional, or substance use disorders, and psychiatric conditions.
2. "Behavioral health provider" means any licensed or accredited behavioral health provider in this state.
3. "Department" means the department of human services.
4. "Human services" means services provided to an individual or an individual's family in need of services to assist the individual or the individual's family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing.

Approved March 28, 2019

Filed March 29, 2019

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<sup>177</sup> Section 50-06-01 was also amended by section 78 of Senate Bill No. 2124, chapter 391.

## CHAPTER 393

### HOUSE BILL NO. 1100

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-06-01.7 of the North Dakota Century Code, relating to fees charged by the behavioral health division of the department of human services.

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

**SECTION 1. AMENDMENT.** Section 50-06-01.7 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-06-01.7. Behavioral health division - Administration - Fees.**

1. The department of human services shall administratively restructure the behavioral health division to require the division to develop and revise, when necessary, the state mental health plan and provide the behavioral health division the authority to implement and supervise a unified mental health delivery system and to assure the mental health services provided by the human service centers, the state hospital, and contracted services are in accordance with the state plan.
2. The behavioral health division may establish nonrefundable application fees not to exceed three hundred dollars for administration and enforcement of licensing and certification activities. The department shall adopt rules as necessary to implement this section. All fees collected under this section must be paid to the behavioral health division and must be used to defray the cost of administering and enforcing licensing and certification activities.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 394

### SENATE BILL NO. 2313

(Senators J. Lee, Hogan, Poolman)  
(Representatives Rohr, Westlind)

AN ACT to create and enact two new subsections to section 50-06-05.1 and two new sections to chapter 50-06 of the North Dakota Century Code, relating to duties of the department of human services, creation of a children's cabinet, and creation of a commission on juvenile justice; to repeal section 50-06-43 of the North Dakota Century Code, relating to the children's behavioral health task force; to provide a report to the legislative management; and to provide an expiration date.

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

<sup>178</sup> **SECTION 1.** A new subsection to section 50-06-05.1 of the North Dakota Century Code is created and enacted as follows:

To develop a system of services and supports to provide behavioral health services and supports in the community for children at risk of or identified as having a behavioral health condition and for the families of these children. This system must include early intervention, treatment, and recovery services and supports and must interface with, but not include, child protective services or juvenile court.

**SECTION 2.** A new subsection to section 50-06-05.1 of the North Dakota Century Code is created and enacted as follows:

To provide resources on mental health awareness and suicide prevention to the behavioral health resource coordinator at each school. The resources must include information on identifying warning signs, risk factors, and the availability of resources in the community.

**SECTION 3.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

#### **Children's cabinet - Membership - Duties.**

1. The children's cabinet is created to assess, guide, and coordinate the care for children across the state's branches of government and the tribal nations.
2. The children's cabinet consists of the following members:
  - a. The governor, or the governor's designee;
  - b. The chief justice of the supreme court, or the chief justice's designee;

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<sup>178</sup> Section 50-06-05.1 was also amended by section 4 of House Bill No. 1102, chapter 404, section 10 of Senate Bill No. 2055, chapter 438, section 11 of Senate Bill No. 2055, chapter 438, and section 81 of Senate Bill No. 2124, chapter 391.



- c. The speaker of the house of representatives, or the speaker's designee;
  - d. The president pro tempore of the senate, or the president pro tempore's designee;
  - e. The superintendent of public instruction, or the superintendent's designee;
  - f. The director of the committee on protection and advocacy, or the director's designee;
  - g. A representative of the tribal nations in the state, who is appointed by the governor; and
  - h. Four individuals representing parents, private service providers, or other community interests, who are appointed by the governor to serve a term of two years, at the pleasure of the governor, and who are entitled to reimbursement from the department of human services for travel and lodging at the same rate as provided for state officers and employees.
3. The chairman of legislative management, shall serve as the presiding officer of the cabinet. The cabinet shall meet at least quarterly. Additional meetings may be held at the discretion of the presiding officer.
4. The children's cabinet shall:
- a. Coordinate broad-based leadership across programs, agencies, branches of government, and tribal nations to meet the needs of children;
  - b. Develop strategies to address gaps or needs regarding early care and education, medical and behavioral health, community, child welfare, and juvenile justice;
  - c. Develop strategies to provide for the full continuum of care in the delivery of services, including promotion, prevention, early identification and intervention, service delivery, and recovery;
  - d. Seek to engage cooperation across public and private service providers;
  - e. Provide a comprehensive vision for how and where children are best served, attending to children in a respectful and relevant manner;
  - f. Seek strategies to provide services to children without consideration of prior engagement with juvenile services;
  - g. Provide for the active participation of consumers and providers statewide on advisory committees; and
  - h. Receive information and recommendations from the department of human services, department of corrections and rehabilitation, and other state agencies.
5. The department of human services shall provide the children's cabinet with staffing and administrative services.

**SECTION 4.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Commission on juvenile justice - Reports.**

1. The commission on juvenile justice is composed of:
  - a. Three members of the house of representatives, two of whom must be selected by the majority leader of the house of representatives and one of whom must be selected by the minority leader of the house of representatives;
  - b. Three members of the senate, two of whom must be selected by the majority leader of the senate and one of whom must be selected by the minority leader of the senate;
  - c. The governor, or the governor's designee;
  - d. The superintendent of public instruction, or the superintendent's designee;
  - e. The executive director of the department of human services, or the executive director's designee;
  - f. The director of the department of corrections and rehabilitation's division of juvenile services, or the director's designee;
  - g. The executive director of the Indian affairs commission, or the executive director's designee;
  - h. A director of juvenile court services, appointed by the chief justice of the supreme court;
  - i. A representative from the commission on legal counsel for indigents; and
  - j. The following members appointed by the governor:
    - (1) A state's attorney;
    - (2) A representative of a children's advocacy center; and
    - (3) A representative of a city police department.
2. The governor shall designate one of the members of the commission to serve as the presiding officer. The governor's appointees serve at the pleasure of the governor. Excluding ex officio members, the term of a commission member is two years.
3. The commission shall meet at least four times per year at the times and locations designated by the presiding officer. The office of the governor shall provide staffing for the commission.
4. The commission shall:
  - a. Review chapter 27-20;
  - b. Gather information concerning issues of child welfare, including education, abuse, and neglect;

- c. Receive reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations, in furtherance of the commission's duties;
  - d. Advise effective intervention, resources, and services for children;
  - e. Report to and be subject to the oversight of the children's cabinet; and
  - f. Annually submit to the governor and the legislative management a report with the commission's findings and recommendations which may include a legislative strategy to implement the recommendations.
5. A member of the commission who is not a state employee is entitled to reimbursement for mileage and expenses as provided by law for state officers and employees to be paid by the department of corrections and rehabilitation. A state employee who is a member of the commission is entitled to receive that employee's regular salary and is entitled to reimbursement for mileage and expenses to be paid by the employing agency. A member of the commission who is a member of the legislative assembly is entitled to receive per diem compensation at the rate provided under section 54-35-10 for each day performing official duties of the commission. The legislative council shall pay the per diem compensation and reimbursement for travel and expenses as provided by law for any member of the commission who is a member of the legislative assembly.

**SECTION 5. REPEAL.** Section 50-06-43 of the North Dakota Century Code is repealed.

**SECTION 6. EXPIRATION DATE.** Section 3 of this Act is effective through July 31, 2025, and after that date is ineffective.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 395

### HOUSE BILL NO. 1034

(Legislative Management)  
(Human Services Committee)

AN ACT to require the department of human services to establish guidelines for long-term care services providers to deliver home and community-based services.

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

#### **SECTION 1.**

#### **Long-term care services providers - Home and community-based services.**

The department of human services shall establish guidelines for long-term care services providers to deliver home and community-based services to allow individuals to remain in their homes and communities.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 396

### HOUSE BILL NO. 1105

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 50-06-06.13 and 50-06-42 of the North Dakota Century Code, relating to treatment services for children with serious emotional disorders and the substance use disorder treatment voucher system.

#### 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.**

1. The department shall establish ~~in all human service regions~~ a program to provide out-of-home treatment services for a Medicaid-eligible child with a serious emotional disorder. The department may not require a parent or legal guardian to transfer legal custody of the child in order to have the child placed in an out-of-home treatment program ~~when~~<sup>if</sup> the sole reason for the placement is the need to obtain services for the child's emotional or behavioral problems. With departmental approval, a parent with legal and physical custody of the child may obtain treatment services for the child through the program. A parent without physical custody of a child, who disagrees with a child's treatment under this section, may request a judicial determination regarding the child's treatment.
2. The department may establish a program to prevent out-of-home placement for a Medicaid-eligible child with a behavior health condition as defined in the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fifth edition, text revision (2013).

**SECTION 2. AMENDMENT.** Section 50-06-42 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-42. Substance use disorder treatment voucher system.**

The department shall establish and administer, within the limits of legislative appropriations, a voucher system to address underserved areas and gaps in the state's substance abuse treatment system and to assist in the payment of addiction treatment services provided by ~~private~~ licensed substance abuse treatment programs, excluding regional human service centers, and hospital- or medical clinic-based programs for medical management of withdrawal. Services eligible for the voucher program include only those levels of care recognized by the American society of addiction medicine, with particular emphasis given to underserved areas and programs. The department shall ensure that a ~~private~~ licensed substance abuse treatment program, ~~hospital~~<sup>hospital</sup>, and medical clinic ~~programs~~<sup>program</sup> accepting vouchers collects and reports process and outcome measures. The department shall develop requirements and provide training and technical assistance to a ~~private~~

licensed substance abuse treatment program, ~~hospital~~hospital, and medical clinic ~~programs~~program accepting vouchers. A private licensed substance abuse treatment program, hospital, and medical clinic program accepting vouchers shall provide evidence-based services.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 397

### SENATE BILL NO. 2247

(Senators Hogan, J. Lee, Luick)  
(Representatives Rohr, Schneider, Westlind)

AN ACT to amend and reenact section 50-06-37 of the North Dakota Century Code, relating to the developmental disabilities system reimbursement project; to provide a statement of legislative intent; and to provide for a legislative management report.

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

<sup>179</sup> **SECTION 1. AMENDMENT.** Section 50-06-37 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-06-37. Developmental disabilities system reimbursement project.**

The department of human services, in conjunction with developmental disabilities ~~service~~community providers, shall develop~~maintain~~ a prospective ~~or~~-related payment system with an independent rate model utilizing the support intensity scale ~~based on a~~ state-approved assessment.

1. The department shall ~~establish~~maintain a steering committee consisting of no more than eighteen representatives from all interested providers ~~and which must include no more than two clients, no more than one family member of a client, a representative of the department representatives, and a representative of the North Dakota protection and advocacy project.~~ The steering committee shall guide the development of the new payment system including assisting a consultant to conceptualize, develop, design, implement, and evaluate a new payment system.
2. The department shall ~~may~~ contract with a consultant by September 1, 2011, to develop~~continuously improve~~, in collaboration with the steering committee, the payment system and the resource allocation model tying funding to support intensity scale assessed needs of clients aged sixteen and older and to a state-approved assessment that assesses needs of clients younger than sixteen years of age the state-approved assessment.
3. After the prospective or related payment system rates are developed, the new rates must be tested on a sampling of clients and providers, the sample to be determined by the steering committee, allowing sufficient time to capture provider cost, client-realized need, and service provision data. The consultant shall provide the appropriate sampling number to sufficiently test the rates, types of services, and needs of clients with the intent to include as many providers as fiscally feasible.
- ~~4.3.~~ The department shall contract with a team of support intensity scale assessors by September 1, 2011. The team shall begin assessing immediately the

<sup>179</sup> Section 50-06-37 was also amended by section 3 of House Bill No. 1517, chapter 228.

~~identified client pilot group identified by the consultant contracted in subsection 2-vendor to complete assessments based on the state-approved assessment.~~

5. ~~Once testing is complete, the data~~
4. ~~Data must be analyzed by the consultantsteering committee, and the consultantsteering committee shall makerecommend to the department any needed rate adjustments, resource allocation modifications, or process assumptions, including the state-approved assessment.~~
6. ~~Beginning in June 2012, the~~
5. ~~The department and the steering committee shall report development activities and status information to an interim legislative committee.~~
7. ~~Implementation of any system developed under this chapter may not occur before the implementation of the department's new Medicaid management information system.~~

**SECTION 2. LEGISLATIVE INTENT - ONGOING IMPROVEMENTS.** It is the intent of the sixty-sixth Legislative Assembly that the department of human services continue to work with community providers to consider revising administrative requirements regarding developmental disability service providers to minimize disruption and maximize effectiveness of direct services to clients.

**SECTION 3. LEGISLATIVE INTENT - COMMUNITY PROVIDER CAPACITY - INTELLECTUAL DISABILITY SYSTEM - REPORT TO LEGISLATIVE MANAGEMENT.** It is the intent of the sixty-sixth legislative assembly that the department of human services continue to work with community providers to continuously improve community provider capacity to serve clients in the least restrictive appropriate setting. The department shall provide the legislative management a status report on the ongoing work of the department to improve community provider capacity, together with any barriers encountered. The department shall also provide a report to legislative management regarding the system of services for individuals with an intellectual or developmental disability, including a review of the existing service system, funding, and unmet needs.

Approved April 23, 2019

Filed April 24, 2019



## CHAPTER 398

### HOUSE BILL NO. 1237

(Representatives Roers Jones, Satrom, Schneider)  
(Senator Clemens)

A BILL to provide for a task force on prevention of sexual abuse of children; and to provide for a report to the legislative management and the governor.

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

#### **SECTION 1. TASK FORCE ON PREVENTION OF SEXUAL ABUSE OF CHILDREN - REPORT TO THE LEGISLATIVE MANAGEMENT AND THE GOVERNOR.**

1. Beginning with the effective date of this Act and ending September 30, 2024, the task force on the prevention of sexual abuse of children is established to develop and implement a comprehensive statewide approach to the prevention of child sexual abuse. The statewide approach must ensure appropriate policies, funding, staffing, resources, and programming are available. The task force shall build upon the efforts of the 2017-18 North Dakota task force on the prevention of sexual abuse of children.
2. The task force consists of the following members:
  - a. One member of the senate appointed by the majority leader of the senate, one member of the house of representatives appointed by the majority leader of the house of representatives, and one member of the minority party appointed by the minority leaders of the senate and the house of representatives;
  - b. The executive director of the department of human services, or the executive director's designee;
  - c. A representative of a children's advocacy center or similar organization that assists in the investigation, prosecution, and treatment of child sexual and physical abuse cases, appointed by the executive director of the department of human services;
  - d. A representative of a domestic violence rape crisis center involved in the prevention of child abuse or the treatment of child abuse victims, or both, appointed by the executive director of the department of human services;
  - e. The superintendent of public instruction, or the superintendent's designee;
  - f. A representative of law enforcement, appointed by the attorney general;
  - g. The executive director of the Indian affairs commission, or the executive director's designee;
  - h. One school social worker from a public school district in the state, appointed by the superintendent of public instruction;

- i. Two school principals, one from an urban school district and one from a rural school district in the state, appointed by the superintendent of public instruction from a list provided by the North Dakota council of educational leaders;
  - j. One member from the faith-based community, appointed by the attorney general;
  - k. Two school counselors, one from an urban school district and one from a rural school district in the state, appointed by the superintendent of public instruction from a list provided by the North Dakota school counselors association; and
  - l. Any other organization or individual the task force deems appropriate.
3. The executive director of the department of human services, or the executive director's designee, shall convene the task force. The task force shall elect a presiding officer by a majority vote of the membership of the task force. The task force shall meet at the call of the presiding officer.
4. The task force shall focus on:
  - a. Increasing child sexual abuse prevention education for tribal and nontribal children and adults;
  - b. Increasing interagency data collection, sharing, and collective analysis;
  - c. Supporting resource development for investigations and prosecutions of child sexual abuse, including the sentencing, supervision, and treatment of sex offenders;
  - d. Increasing trauma-informed services for children, adult survivors, and families; and
  - e. Implementing the remaining recommendations of the November 2018 final report of the North Dakota task force on the prevention of child sexual abuse.
5. The recommendations of the task force may include proposals for specific statutory changes, actions the task force deems necessary and appropriate to initiate awareness education of adults and children, and methods to foster cooperation among state agencies and between the state and local governments in adopting and implementing a policy addressing sexual abuse of children which may include:
  - a. Developmentally appropriate resources for students in prekindergarten through grade twelve;
  - b. Training for school personnel on child sexual abuse;
  - c. Educational information to parents or guardians provided in school handbooks regarding the warning signs of a child being abused, along with any needed assistance, referral, or resource information;
  - d. Available counseling and resources for students affected by sexual abuse;

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- e. Emotional and educational support for a child of abuse to continue to be successful in school; and
  - f. Any other action deemed appropriate.
6. Before July first of each even-numbered year, the task force shall submit a report, together with any findings and recommendations, to the legislative management and the governor. Before July 1, 2024, the task force shall submit a final report, together with any findings and recommendations, to the legislative management and the governor.

Approved April 17, 2019

Filed April 18, 2019

## CHAPTER 399

### HOUSE BILL NO. 1032

(Legislative Management)  
(Human Services Committee)

AN ACT to create and enact a new section to chapter 50-06.2 of the North Dakota Century Code, relating to a sliding fee schedule for the service payments for elderly and disabled program.

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

**SECTION 1.** A new section to chapter 50-06.2 of the North Dakota Century Code is created and enacted as follows:

#### **Service payments for elderly and disabled sliding fee schedule.**

The department shall establish annually a sliding fee schedule based on family size and income to determine a recipient's participation fee percentage for services received through the service payments for elderly and disabled program.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 400

### SENATE BILL NO. 2027

(Legislative Management)  
(Health Services Committee)

AN ACT to amend and reenact section 50-06.4-01 of the North Dakota Century Code, relating to the definition of brain injury.

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

**SECTION 1. AMENDMENT.** Section 50-06.4-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-06.4-01. Definitions.**

As used in this chapter:

1. "Brain injury" means ~~any injury to the brain which occurs after birth and which is acquired through traumatic or nontraumatic insults. The term does not include hereditary, congenital, nontraumatic encephalopathy, nontraumatic aneurysm, stroke, or degenerative brain disorders or injuries induced by birth trauma~~damage to the brain or the coverings of the brain which produces an altered mental state and results in a decrease in cognitive, behavioral, emotional, or physical functioning. The term does not include an insult of a degenerative or congenital nature.
2. "Department" means the department of human services.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 401

### SENATE BILL NO. 2105

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 50-06.5 of the North Dakota Century Code, relating to duties of the designated state entity regarding independent living council and independent living centers and services; to amend and reenact sections 50-06.5-01, 50-06.5-02, 50-06.5-03, 50-06.5-04, 50-06.5-06, 50-06.5-07, and 50-06.5-08 of the North Dakota Century Code, relating to the independent living council and independent living centers and services; and to repeal section 50-06.5-05 of the North Dakota Century Code, relating to the state plan for independent living centers and services.

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

**SECTION 1. AMENDMENT.** Section 50-06.5-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-06.5-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Center for independent living" means a consumer-controlled, community-based, cross-disability, nonresidential, private, nonprofit agency that is designed and operated within a local community by individuals with disabilities ~~a disability, that provides which can provide~~ an array of independent living services and programs, ~~and that does not offer permanent housing among its services and complies with the standards and assurances in accordance with section 796f-4 of the federal Rehabilitation Act of 1973, as amended [Pub. L. 93-112; 29 U.S.C. 701 et seq.].~~
2. "Consumer control" means power and authority vested in individuals with disabilities ~~a disability~~ and, when applied to a center for independent living, means ~~at least fifty-one more than fifty~~ percent of the principal governing board; ~~and management, and staff are individuals with disabilities a disability.~~
3. "Council" means the statewide independent living council.
4. "Designated state ~~agency~~entity" means the vocational rehabilitation division of the department of human services as defined in the state plan for independent living.
5. "Director" means the director of the designated state ~~agency~~entity.
6. "Disability" means ~~a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or being regarded as having a physical or mental impairment that substantially limits one or more of the major life activities.~~

7. "Independent living core services" means information and referral services; independent living skills training; peer counseling, and including cross-disability peer counseling; individual and systems advocacy; services that facilitate the transition of an individual with a significant disability from a nursing home and other institutions to a home and community-based residence, with the requisite supports and services; to provide assistance to an individual with a significant disability who is at risk of entering an institution so the individual may remain in the community; and to facilitate the transition of youth who are individuals with a significant disability, who were eligible for an individualized education program and who have completed their postsecondary education or otherwise left school, to postsecondary life or have reached the age of eighteen and are still receiving services in accordance with an individualized education program and have not completed their postsecondary education.
- ~~8.7.~~ "Independent living services" includes independent living core services and other services and assistance that may include:
- ~~a. Counseling services, including psychological, psychotherapeutic, and related services;~~
  - ~~b. Services related to securing housing or shelter;~~
  - ~~c. Assistive technology;~~
  - ~~d. Interpreter and reader services;~~
  - ~~e. Personal assistance services, including attendant care and training of personnel providing those services;~~
  - ~~f. Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation and other support services;~~
  - ~~g. Services and technical assistance related to the implementation of the federal Americans with Disabilities Act and other related state and federal laws;~~
  - ~~h. Activities supporting, assisting, or maintaining life in the community;~~
  - ~~i. Transportation, including referral and assistance for transportation;~~
  - ~~j. Individual and group community integration activities;~~
  - ~~k. Training to develop skills that promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;~~
  - ~~l. Appropriate preventive services to decrease the needs of individuals assisted under this chapter for similar services in the future;~~
  - ~~m. Community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and~~

- n. Other services, as may be necessary, not inconsistent with this chapter as described in section 705 of the federal Rehabilitation Act of 1973, as amended [Pub. L. 93-112; 29 U.S.C. 701 et seq.].
8. "Individual with a disability" means an individual with a physical or mental impairment that substantially limits one or more of the major life activities of such individual, with a record of impairment, or who is regarded as having such an impairment.
9. "Individual with a significant disability" means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.

**SECTION 2. AMENDMENT.** Section 50-06.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.5-02. Statewide independent living council.**

A statewide independent living council is established. The council shall adopt bylaws governing operations of the council. The council shall meet at least quarterly.

**SECTION 3. AMENDMENT.** Section 50-06.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.5-03. Membership Requirements of the statewide independent living council.**

1. ~~The governor, or an entity designated by the governor, shall appoint the members of the council, except as provided in subdivision b of subsection 2. The appointing authority shall select members after soliciting recommendations from representatives of consumer-controlled organizations representing a broad range of individuals with disabilities. The council shall select a chairman from among its membership council shall meet or exceed the requirements of section 796d of the federal Rehabilitation Act of 1973, as amended [Pub. L. 93-112; 29 U.S.C. 701 et seq.], including composition and appointment of members.~~
2. The council must include:
  - a. A majority of individuals with disabilities who are not state employees.
  - b. At least fifty percent of the directors of the centers for independent living serving the state or the directors' designated representatives as chosen by all the directors of centers for independent living serving the state.
  - c. Ex officio nonvoting members who are representatives from the designated state agency and representatives from other state agencies that provide services to individuals with disabilities.
  - d. Additional members may be:
    - (1) Representatives from centers for independent living;



- (2) ~~Parents and guardians of individuals with disabilities;~~
  - (3) ~~Advocates of and for individuals with disabilities;~~
  - (4) ~~Representatives from private businesses;~~
  - (5) ~~Representatives from organizations that provide services for individuals with disabilities; and~~
  - (6) Other appropriate individuals may not be established as an entity within a state agency, including a designated state entity. The council must be independent of and autonomous from the designated state entity and all other state agencies.
3. ~~The council must be composed of members who provide statewide representation, who represent a broad range of individuals with disabilities, and who are knowledgeable about the independent living philosophy and centers for independent living services and programs.~~
  4. ~~A member of the council may not serve more than two consecutive three-year terms. The two consecutive three-year term limit does not include the term of a member appointed to fill a vacancy occurring before the expiration of the term for which appointed or the reduced terms of service of the members initially appointed to provide for the expiration of terms on a staggered basis as specified by the appointing authority. Any vacancy occurring in the membership of the council must be filled in the same manner as the original appointment. A vacancy does not affect the power of the remaining members to execute the duties of the council.~~At least fifty percent of the directors of the centers for independent living serving the state, or a designee if unable to meet the residency requirements of the state, must be members.

**SECTION 4. AMENDMENT.** Section 50-06.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.5-04. Duties of the statewide independent living council.**

The council shall:

1. ~~Jointly develop and submit, in conjunction with the designated state agency, the state plan as required.~~
2. ~~Monitor, review, and evaluate the implementation of the state plan.~~
3. ~~Coordinate activities with councils that address the needs of specific disability populations and issues under other federal and state law.~~
4. ~~Prepare reports and make recommendations, as necessary, to the governor, legislative assembly, and designated state agency~~ fulfill the duties as set forth in section 796d of the federal Rehabilitation Act of 1973, as amended [Pub. L. 93-112; 29 U.S.C. 701 et seq.] which include developing, monitoring, implementing the state plan for independent living; developing or assisting in the development of required state and federal reports; recordkeeping; coordinating with other state entities that provide similar or complementary services; and preparing, in conjunction with the designated state entity, a plan for the provision of resources needed to carry out the functions of the state

plan for independent living and as defined within the federal Rehabilitation Act of 1973, as amended.

**SECTION 5. AMENDMENT.** Section 50-06.5-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.5-06. IndependentCenter for independent living centers.**

1. Under the direction set forth in the state plan for independent living, the director, in cooperation with the council, shall award grants to eligible agencies from funds appropriated for this purpose.
2. ~~The director, with the cooperation of the council, may make a grant under this section to any eligible agency that has the power and authority to carry out the purposes of this chapter, that is determined by the director and the council to be able to plan, conduct, administer, and evaluate a center for independent living consistent with the standards and assurances, and that submits an application to the director as required.~~
3. In the administration of this section, the designated state agency~~entity~~ shall award grants to any eligible agency that is receiving funds for this purpose on June 30, 1992, unless the director finds that the agency involved fails to meet program and fiscal standards and assurances.
- 4.3. The minimum annual allocation for each center must be established in response to recommendations of the council. Priority for distribution of these funds is as follows:
  - a. Centers funded through title VII of the Rehabilitation Act of 1973, as amended, but receiving less than the minimum annual allocation.
  - b. New centers for independent living as planned by the council.
  - e. Expansion of current centers to serve unserved or underserved areas of the state.
5. ~~If there is no center for independent living serving a region or a region is underserved and funds are sufficient to support an additional center for independent living within the state, the director may award a grant under this section to the most qualified applicant consistent with the state plan and setting forth design of the state for establishing a statewide network of centers for independent living.~~

**SECTION 6. AMENDMENT.** Section 50-06.5-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.5-07. Standards and assurances.**

1. Each center for independent living that receives assistance under this chapter ~~must~~shall comply with the standards and assurances set out in subsection 2section 796f-4 of the federal Rehabilitation Act of 1973, as amended [Pub. L. 93-112; 29 U.S.C. 701 et seq.] to ensure that all programs and activities are planned, conducted, administered, and evaluated in a manner consistent with the purposes of this chapter.
2. ~~The standards are:~~

- 
- a. ~~The center shall promote and practice the independent living philosophy of:~~
    - (1) ~~Consumer control of the center, regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center;~~
    - (2) ~~Self-help and self-advocacy;~~
    - (3) ~~Development of peer relations and peer role models; and~~
    - (4) ~~Equal access of individuals with disabilities to society and to all services, programs, activities, resources, and facilities whether public or private and regardless of the funding source.~~
  - b. ~~The center shall provide services to individuals with a range of disabilities. The center shall provide services on a cross-disability basis for individuals with different types of disabilities, including individuals with disabilities who are members of populations that are unserved or underserved. Eligibility for services at any center for independent living may not be based on the presence of any one or more specific disabilities.~~
  - e. ~~The center shall facilitate the development and achievement of independent living goals selected by individuals who seek that assistance by the center.~~
  - d. ~~The center shall work to increase the availability and improve the quality of community options for independent living to facilitate the development and achievement of independent living goals by individuals with disabilities.~~
  - e. ~~The center shall provide independent living core services and, as appropriate, a combination of any other independent living services.~~
  - f. ~~The center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with disabilities.~~
  - g. ~~The center shall conduct resource development activities to obtain funding from sources other than that available under this chapter.~~
3. The applicant shall provide, as the council may require, satisfactory assurance that:
- a. The applicant is an eligible agency.
  - b. The center will be designed and operated within local communities by individuals with ~~disabilities~~a disability, including an assurance that the center will have a board that is the principal governing body of the center and a majority of that board will be composed of individuals with ~~disabilities~~a significant disability.
  - c. The applicant will comply with the standards and assurances set forth in this section.

- d. The applicant will establish clear priorities through annual and three-year programs and financial planning objectives for the center, including overall goals or mission for the center, a work plan for achieving the goals or mission, specific objectives, services priorities, and types of services to be provided along with a description that demonstrates how the proposed activities of the applicant are consistent with the most recent three-year state plan for independent living.
- e. The applicant will use sound organization, personnel assignment practices, including taking affirmative action to employ and advance in employment qualified individuals with ~~disabilities~~ a significant disability on the same terms and conditions required with respect to the employment of individuals with ~~disabilities~~ a disability under section 503796m of the federal Rehabilitation Act of 1973, as amended, and the federal Americans with Disabilities Act.
- f. The applicant will ensure that the majority of its staff, and individuals on its staff in decisionmaking positions, are individuals with ~~disabilities~~ significant disability.
- g. The applicant will practice sound fiscal management, including making arrangements for an annual independent fiscal audit or review.
- h. The applicant will conduct annual self-evaluations, prepare an annual report, and maintain records, adequate to measure performance with respect to the standards containing information regarding, at least:
  - (1) The extent to which the center is in compliance with the standards and assurances.
  - (2) The numbers and types of individuals with ~~disabilities~~ a significant disability receiving services through the center.
  - (3) The types of services provided through the center and the number of individuals with ~~disabilities~~ a significant disability receiving each type of service.
  - (4) The source and amounts of funding for the operation of the center.
  - (5) The number of individuals with ~~disabilities~~ a significant disability who are employed by, and the number who are in management and decisionmaking positions in the center.
  - (6) The comparison, when appropriate, of the activities of the center in prior years, with the activities of the center in the most recent year.
- i. Individuals with severe ~~disabilities~~ a significant disability who are seeking services from the center will be notified by the center of the existence of the availability of the client assistance program and a way to contact that program.
- j. Aggressive outreach, regarding services provided through the center, will be conducted in an effort to reach populations of individuals with ~~disabilities that~~ a disability which are unserved or underserved by programs

under this chapter, especially minority groups and urban and rural populations.

- k. Staff at centers for independent living will receive training on how to serve the unserved and underserved populations, including minority groups and urban and rural populations.
- l. The center will submit to the council a copy of its ~~approved grant application~~ annual report and the annual audit or review required under subdivision g.
- m. The center will prepare and submit a report to the designated state ~~agency~~ entity, at the end of each fiscal year, that contains the information described in subdivision h ~~and information regarding the extent to which the center is in compliance with the standards set forth in subsection 2.~~
- n. ~~Each individual receiving independent living services will have an independent living plan if that individual requests one.~~

4-3. Services may be provided under this chapter to an individual with a significant disability regardless of age, to the parents and family of an individual with a significant disability, and to others in the community.

**SECTION 7. AMENDMENT.** Section 50-06.5-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.5-08. Independent living services and programs.**

From sums appropriated in addition to those allocated for centers for independent living centers, the designated state ~~agency~~ entity may allocate funds, pursuant to the state plan:

- ~~1. To demonstrate ways to expand and improve independent living services.~~
- ~~2. To for independent living to support the operation of centers for independent living.~~
- ~~3. To support activities to increase the capacities of centers for independent living to develop comprehensive approaches or systems for providing independent living services.~~
- ~~4. To conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to policymakers to enhance independent living services for individuals with disabilities.~~
- ~~5. To train individuals with disabilities and individuals providing services to individuals with disabilities and other persons regarding the independent living philosophy.~~
- ~~6. To provide outreach to populations that are unserved or underserved by programs under this chapter, including minority groups and urban and rural populations.~~

**SECTION 8.** A new section to chapter 50-06.5 of the North Dakota Century Code is created and enacted as follows:

**Duties of the designated state entity.****The designated state entity:**

1. Must be responsible for the establishment and maintenance of a council that meets the requirements of section 796d of the federal Rehabilitation Act of 1973, as amended [Pub. L. 93-112; 29 U.S.C. 701 et seq.].
2. Shall receive, account for, and disburse funds received, including title 29, United States Code, subchapter VII, part B funding; state matching funds; and other state funds allocated for centers for independent living and maintenance of the council as set forth in the state plan for independent living.
3. Shall ensure the council receives necessary and sufficient resources needed to fulfill the council's statutory duties and authorities under section 796d of the federal Rehabilitation Act of 1973, as amended [Pub. L. 93-112; 29 U.S.C. 701 et seq.], consistent with the state plan for independent living and in a manner consistent with state and federal regulations.
4. Shall comply with all applicable federal and state laws and regulations.
5. Shall sign the state plan for independent living signifying agreement to execute the responsibilities of the designated state entity identified in section 796c of the federal Rehabilitation Act of 1973, as amended [Pub. L. 93-112; 29 U.S.C. 701 et seq.].
6. Shall assist the council in the development of the plan for the provision of resources, including personnel necessary to carry out the functions of the council.

**SECTION 9. REPEAL.** Section 50-06.5-05 of the North Dakota Century Code is repealed.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 402

### SENATE BILL NO. 2112

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-09-02.2 of the North Dakota Century Code, relating to adoptive placement of children with special needs.

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

<sup>180</sup> **SECTION 1. AMENDMENT.** Section 50-09-02.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-09-02.2. Assistance for adopted children with special needs.**

Assistance provided under this chapter or chapter 50-24.1 after adoption to a child with special needs must be provided without regard to the income or resources of the adopting parents. Except as provided in this section, such assistance continues until the adopted child becomes eighteen years of age, is emancipated, or dies; the adoption is terminated; or a determination of ineligibility is made by the county agency, whichever occurs earlier. If sufficient funds are available, the county agency may continue assistance for an adopted child until the child reaches twenty-one years of age if the agency determines that the adopted child is a student regularly attending a secondary, postsecondary, or career and technical education school in pursuance of a course of study leading to a diploma, degree, or gainful employment. Assistance provided to an adopted child must continue regardless of the residence of the adopting parents. A state or county agency may require, as a condition of receiving assistance under this chapter or chapter 50-24.1, that the adopting parents enter into a contract or agreement regarding the type of assistance to be received; the amount of assistance; the identity of the physical, mental, or emotional condition for which medical assistance is received; or any conditions for continued receipt of assistance. A child with special needs is a child legally available for adoptive placement whose custody has been awarded to the department or a county social service board and who is seven years of age or older; under eighteen years of age with a physical, emotional, or mental disability or has been diagnosed by a licensed physician, physician assistant, or advanced practice registered nurse to be at high risk for such a disability; a member of a minority; or a member of a sibling group.

Approved March 20, 2019

Filed March 21, 2019

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<sup>180</sup> Section 50-09-02.2 was also amended by section 96 of Senate Bill No. 2124, chapter 391.

## CHAPTER 403

### SENATE BILL NO. 2113

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 50-10.2 of the North Dakota Century Code, relating to authorized electronic monitoring of facility residents; to amend and reenact sections 12.1-31-14 and 50-10.2-01 of the North Dakota Century Code, relating to authorized electronic monitoring of facility residents and privacy; and to provide a penalty.

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

<sup>181</sup> **SECTION 1. AMENDMENT.** Section 12.1-31-14 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-31-14. Surreptitious intrusion or interference with privacy.**

1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:
  - a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or
  - b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:
  - a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
  - b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy.
3. In a prosecution under this section, it is an affirmative defense that an individual was acting pursuant to section 3 of this Act.

**SECTION 2. AMENDMENT.** Section 50-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-10.2-01. Definitions.**

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<sup>181</sup> Section 12.1-31-14 was also amended by section 1 of House Bill No. 1503, chapter 116.



In this chapter, unless the context or subject matter otherwise requires:

1. "Authorized electronic monitoring" means the placement and use of an authorized electronic monitoring device, by a resident or resident representative, in the resident's room.
2. "Authorized electronic monitoring device" means video surveillance cameras, monitoring devices, web-based cameras, video phones, or audio recording or transmitting devices, or a combination of these devices, installed in the room of a resident which are designed to acquire, transmit, broadcast, interact, or record video, communications, or other sounds occurring in the room. The term does not include still cameras or devices used for the purpose of the resident having contact with another person but not for the purpose of electronically monitoring a resident.
3. "Conflict of interest" means any type of ownership in a facility or membership on the governing body of a facility by a provider of goods or services to that facility or by a member of that person's individual's immediate family.
- 2-4. "Department" means the department of human services.
- 3-5. "Facility" means a skilled nursing care facility, basic care facility, assisted living facility, or swing-bed hospital approved to furnish long-term care services.
- 4-6. "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchild, uncle, aunt, niece, nephew, or grandchild.
- 5-7. "Remodeling" means any alteration in structure, refurbishing, or repair that would:
  - a. Prevent the facility staff from providing customary and required care; or
  - b. Seriously endanger or inconvenience any resident with noise, dust, fumes, inoperative equipment, or the presence of remodeling workers.
- 6-8. "Resident" means a person an individual residing in a facility.
9. "Resident representative" means a person authorized to act as a resident's agent under power of attorney for health care or guardianship.

**SECTION 3.** A new section to chapter 50-10.2 of the North Dakota Century Code is created and enacted as follows:

**Authorized electronic monitoring - Penalty.**

1. A facility shall permit a resident or the resident representative to conduct authorized electronic monitoring of the resident's room through an authorized electronic monitoring device if:
  - a. The authorized electronic monitoring device is placed in the resident's room;
  - b. The electronic monitoring device is placed in a fixed, stationary position; monitors only the area occupied by the resident and not the area occupied

- by the resident's roommate; and protects the privacy and dignity of the resident;
- c. The facility is given written notice of the placement and use which must include an installation plan in compliance with the facility's standards and regulations the facility provides to the resident;
  - d. A video tape or recording created using an authorized electronic monitoring device records the date and time;
  - e. All costs, except for electricity, associated with the authorized electronic monitoring device, including installation, operation, removal, repairs, room damage, and maintenance, are paid by the resident or resident representative who initiated the use of the authorized electronic monitoring device; and
  - f. A signed authorization for the disclosure of protected health information, as defined by title 45, Code of Federal Regulations, part 160, section 103, compliant with the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] and consenting to the use of the device is given by each resident occupying the same room, or by that resident's resident representative in accordance with subsection 4.
2. A facility that uses an authorized electronic monitoring device in compliance with this chapter is not guilty of a crime or civilly liable under this code for a violation of a resident's privacy.
  3. The facility shall cooperate to accommodate the placement of the authorized electronic monitoring device, unless doing so would place undue burden on the facility.
  4. Before placing and using the authorized electronic monitoring device, a resident or resident representative shall obtain the signed authorization of any other resident residing in the room in accordance with subsection 1. The authorization may be signed by that resident's resident representative.

    - a. The resident's or the resident representative's authorization may limit the use of an authorized electronic monitoring device to only audio monitoring or only video monitoring and may limit the device's time of operation, direction, and focus.
    - b. At any time, a resident or resident representative who did not request the authorized electronic monitoring device in the resident's room may withdraw, in writing, the signed authorization for the use of the device. The resident who requested the device or the resident's resident representative is responsible for having the device disabled in compliance with the facility's standards and regulations after receipt of the written withdrawal.
  5. The facility shall make a reasonable attempt to accommodate a resident if a resident or resident representative of a resident who is residing in a shared room wants to have an authorized electronic monitoring device placed in the room and another resident living in the same shared room refuses to authorize the use of the authorized electronic monitoring device.

6. If authorized electronic monitoring is being conducted in the room of a resident, and another resident will be moved into the room, the resident who requested the device or the resident's resident representative is responsible for having the existing authorized electronic monitoring device disabled in compliance with the facility's standards and regulations unless the new resident or the resident's resident representative authorizes the device pursuant to subsections 1 and 4.
7. A facility may not refuse to admit an individual and may not remove a resident from a facility because of authorized electronic monitoring of a resident's room. A person may not intentionally retaliate or discriminate against a resident for authorization of authorized electronic monitoring.
8. A facility clearly and conspicuously shall post a sign where authorized electronic monitoring is being conducted to alert and inform visitors.
9. A facility or staff of the facility may not access any video or audio recording created through an authorized electronic monitoring device placed in a resident's room without the written consent of the resident or resident representative or court order.
10. A person that intentionally hampers, obstructs, tampers with, or destroys a recording or an authorized electronic monitoring device placed in a resident's room, without the express written consent of the resident or resident representative, is subject to a class B misdemeanor. A person that places an electronic monitoring device in the room of a resident or which uses or discloses a tape or other recording made by the device may be guilty of a crime or civilly liable for any unlawful violation of the privacy rights of another. In any civil proceeding, administrative proceeding, or survey process, material obtained through the use of an authorized electronic monitoring device may not be used if a person intentionally hampered, obstructed, or tampered with the material without the express written consent of the resident or resident representative, or if the material was obtained through the operation of an electronic monitoring device which was not compliant with this section.
11. A person may not intercept a communication or disclose or use an intercepted communication of an authorized electronic monitoring device placed in a resident's room, without the express written consent of the resident or the resident representative.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 404

### HOUSE BILL NO. 1102

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 50-11 of the North Dakota Century Code, relating to criminal history record investigation on identified relatives; to amend and reenact subdivision f of subsection 2 of section 12-60-24, section 25-03.2-03.1, subsection 9 of section 43-12.1-04, subsection 21 of section 50-06-05.1, subsection 1 of section 50-11-00.1, and sections 50-11-00.1, 50-11-01, 50-11-02.3, and 50-11-06.8 of the North Dakota Century Code, relating to criminal history record checks on identified relatives, residential child care facilities, qualified residential treatment program, supervised independent living program, approved foster care facilities, moratorium, and criminal history records investigation; and to provide an effective date.

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

<sup>182</sup> **SECTION 1. AMENDMENT.** Subdivision f of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- f. The department of human services for foster care licenses and approvals, and identified relatives under chapter 50-11, appointments of legal guardians under chapter 50-11.3, and petitions for adoptions under chapter 50-12, except that the criminal history record investigation must be conducted in accordance with those chapters. A criminal history record investigation completed under chapter 50-11, 50-11.3, or 50-12 may be used to satisfy the requirements of a criminal history record investigation under either of the other two chapters.

**SECTION 2. AMENDMENT.** Section 25-03.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **25-03.2-03.1. Moratorium on expansion of psychiatric residential treatment facility for children bed capacity - Exchange of bed capacity.**

1. Notwithstanding sections 25-03.2-03 and 25-03.2-08, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a psychiatric residential treatment facility for children above the state's gross number of beds licensed as of June 30, 2003. This subsection does not apply to nor prohibit the department from licensing additional bed capacity for a new psychiatric residential treatment facility for children if the additional beds are designated for the care of children and adolescents who are residents of other states.

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<sup>182</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1074, chapter 102, section 1 of House Bill No. 1084, chapter 100, section 1 of House Bill No. 1219, chapter 239, section 2 of House Bill No. 1349, chapter 61, and section 1 of House Bill No. 1376, chapter 101.

2. Notwithstanding subsection 1, the department may develop a policy to:
  - a. Exchange ~~residential child care facility~~qualified residential treatment program bed capacity licensed under chapter 50-11 with psychiatric residential treatment facility bed capacity; or
  - b. Exchange psychiatric residential treatment facility bed capacity with ~~residential child care facility~~qualified residential treatment program bed capacity licensed under chapter 50-11.

<sup>183</sup> **SECTION 3. AMENDMENT.** Subsection 9 of section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

9. A person that provides medications, other than by the parenteral route:
  - a. Within a correctional facility, in compliance with section 12-44.1-29;
  - b. Within a psychiatric residential treatment facility for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;
  - c. Within a treatment or care center for individuals with developmental disabilities licensed under chapter 25-16;
  - d. Within a group home, a ~~residential child care facility~~qualified residential treatment program, or an adult foster care facility licensed under section 50-11-01 ~~or North Dakota Administrative Code chapter 75-03-16~~;
  - e. Within the life skills and transition center, to the extent the individual who provides medications is a direct training technician or a vocational training technician as approved by the department of human services;
  - f. Within a human service center licensed under chapter 50-06; or
  - g. Within a primary or secondary school under a program established under section 15.1-19-23 if the individual has received education and training in medication administration and has received written consent of the student's parent or guardian.

<sup>184</sup> **SECTION 4. AMENDMENT.** Subsection 21 of section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

21. To administer, allocate, and distribute any funds made available for the payment of ~~transitional supervised independent living services, to develop standards and conduct needs assessments regarding transitional a supervised independent living services, to develop or approve and to evaluate demonstration projects offering transitional living programs~~program, to approve ~~transitional supervised independent living facilities~~services for the purpose of providing foster care placement, and to apply for and administer

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<sup>183</sup> Section 43-12.1-04 was also amended by section 1 of House Bill No. 1099, chapter 405.

<sup>184</sup> Section 50-06-05.1 was also amended by section 10 of Senate Bill No. 2055, chapter 438, section 11 of Senate Bill No. 2055, chapter 438, section 81 of Senate Bill No. 2124, chapter 391, and section 1 of Senate Bill No. 2313, chapter 394.

federal and other funds that may be made available to undertake any of the activities described in this subsection. For purposes of this subsection:

- a. ~~"Transitional living facility" means a specific site, which is identified by a licensed child placing agency or residential child care facility and which is approved by the department, for the provision of transitional living services.~~
- b. ~~"Transitional living program" means a program that provides transitional living services and may include an identified program operations location approved by the department.~~
- c. ~~"Transitional living services" may include housing, supervision, and supportive services intended and designed to assist persons who have received foster care services and who have reached age seventeen, but who have not reached age twenty-one, to achieve independence and self-sufficiency.~~

**SECTION 5. AMENDMENT.** Subsection 1 of section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Approval" means the approval by the department, upon submission of tribal licensing standards or in the absence of tribal licensing standards compliance with state standards, of a home of a Native American family facility located on or near, as defined by the tribe, a recognized Indian reservation in North Dakota or of a facility owned by the tribe or a tribal member and located on a recognized Indian reservation in North Dakota, not subject to the jurisdiction of the state of North Dakota for licensing purposes, to allow the home or facility to receive title IV-E funding.~~

<sup>185</sup> **SECTION 6. AMENDMENT.** Section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-00.1. Definitions.**

As used in this chapter:

1. "Approval" means the approval by the department, upon submission of tribal licensing standards or in the absence of tribal licensing standards compliance with state standards, of a facility located on or near, as defined by the tribe, a recognized Indian reservation in North Dakota, not subject to the jurisdiction of the state of North Dakota for licensing purposes, to allow the facility to receive title IV-E funding.
2. "Authorized agent" means the county social service board, unless another entity is designated by the department.
3. "Department" means the department of human services.
4. "Facility" means a foster home for adults, family foster home for children, group homesupervised independent living program, or residential child care facilityqualified residential treatment program for children.

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<sup>185</sup> Section 50-11-00.1 was also amended by section 2 of House Bill No. 1099, chapter 405, and section 109 of Senate Bill No. 2124, chapter 391.

5. "Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee thereof ~~the residence to no more than four~~<sup>six</sup> children, ~~unless all the children in foster care are related to each other by blood or marriage or unless the department approves otherwise for the placement of siblings, in which case the limitation in this subsection does not apply.~~
6. "Foster care for adults" means the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour per day basis, in the home of a caregiver, to ~~a person an~~ individual age eighteen or older, who is unable, neglects, or refuses to provide for the ~~person's~~individual's own care.
7. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a family foster home, ~~group homes~~supervised independent living program, or qualified residential child care facility~~treatment program~~.
8. "Foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee of the residence, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
9. ~~"Group home" means a licensed or approved residence in which foster care is regularly provided to at least four, but fewer than thirteen, unrelated children.~~
10. ~~"Residential child care facility" means a licensed or approved facility other than an occupied private residence providing foster care to thirteen or more unrelated children, except as may be otherwise provided by rule or regulation.~~ "Identified 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.
10. "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for children.
11. "Supervised independent living program" means a licensed or approved setting providing supervision and service delivery to youth transitioning into adulthood.

**SECTION 7. AMENDMENT.** Section 50-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-01. Foster care for children - License or approval required.**

No person

1. A person may not furnish foster care for children for more than thirty days during a calendar year without first procuring a license or approval to do so from the department. The mandatory provisions of this section requiring licensure or approval do not apply when the care is provided in:
  4. a. The home of a person related to the child by blood or marriagean identified relative.
  2. b. A home or institution under the management and control of the state or a political subdivision.
  3. c. A home or facility furnishing room and board primarily to accommodate the child's educational or career and technical education needs.

A person

2. An individual providing care under subdivision a of subsection 1 shall submit to a criminal history record investigation as required under section 50-11-06.8.

**SECTION 8. AMENDMENT.** Section 50-11-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-02.3. ~~Moratorium on expansion of~~Maximum qualified residential child care facility or group hometreatment program 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, 2003shall determine the maximum number of licensed qualified residential treatment program bed capacity for children based upon a needs assessment conducted by the department.~~

<sup>186</sup> **SECTION 9. AMENDMENT.** Section 50-11-06.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-06.8. Criminal history record investigation - Fingerprinting required.**

1. Each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
  - a. Any individual employed by, or providing care in, the facility; and
  - b. Any adult living in the facility, but not being provided care in the facility.

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<sup>186</sup> Section 50-11-06.8 was also amended by section 4 of House Bill No. 1099, chapter 405.



2. Each identified relative, at the request by the department, shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from any adult living in the home of the identified relative.
3. The facility or identified relative shall assure that information obtained under ~~subsection 4~~subsections 1 and 2 is provided to the department.
- ~~3-4.~~ Upon receipt of all fingerprints and necessary information relating to a license request~~criminal history record investigation~~, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of any~~the state criminal history record information~~ response received from the bureau of criminal investigation to the facility, public agency, or authorized agent making the request.
- ~~4-5.~~ The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau of criminal investigation also shall ~~also~~ provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
- ~~5-6.~~ Upon request by the operators of a facility, employees of a facility, or identified relative, a law enforcement agency shall take fingerprints of persons~~individuals~~ described in this section if the request is made for purposes of this section.
- ~~6-7.~~ The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check.
- ~~7-8.~~ An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
- ~~8-9.~~ Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall secure from a law enforcement agency or any other agency authorized to take fingerprints two sets of fingerprints and all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
  - a. Any individual employed by, or providing care in, an adult family foster care facility; and
  - b. Any adult living in an adult family foster care facility, but not being provided care in the facility.
- ~~9-10.~~ A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11.3-01 and 50-12-03.2.

**SECTION 10.** A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

**Identified relative - Criminal history record investigation.**

1. The department may require an identified relative and any adult living in the home of the identified relative to go through a criminal history record investigation pursuant to section 50-11-06.8.
2. If the department requires a criminal history record investigation pursuant to subsection 1, the department shall consider an identified relative and any adult living in the home of the identified relative as a family foster home for children applicant, family foster home for children provider, or members of the family foster home for children for the purpose of determining the impact of the individual's criminal history record investigation on the individual's ability to provide foster care for children.

**SECTION 11. EFFECTIVE DATE.** Section 5 of this Act becomes effective August 1, 2019. The remainder of this Act becomes effective on October 1, 2019.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 405

### HOUSE BILL NO. 1099

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 43-12.1-04, 50-11-00.1, 50-11-02.4, 50-11-06.8, 50-11-06.9, and 50-24.1-18 of the North Dakota Century Code, relating to the delegation of administration of routine medications to a qualified service provider, agency foster homes for adults, criminal history record investigations, and the implementation of residential habilitation and community support services in a residential setting or private residence; and to provide for application.

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

<sup>187</sup> **SECTION 1. AMENDMENT.** Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-12.1-04. Persons exempt from provisions of chapter.**

This chapter does not apply to a person that is not licensed or registered under this chapter and is:

1. A person that performs nursing interventions in cases of emergency or disaster.
2. A student practicing nursing as a part of an in-state board-approved nursing education program.
3. A licensed nurse of another state who is in good standing and who is employed in this state by the United States government or any of its bureaus, divisions, or agencies.
4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. An individual who performs nursing tasks for a family member.
7. A person that renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person that provides medications, other than by the parenteral route:

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<sup>187</sup> Section 43-12.1-04 was also amended by section 3 of House Bill No. 1102, chapter 404.

- a. Within a correctional facility, in compliance with section 12-44.1-29;
  - b. Within a psychiatric residential treatment facility for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;
  - c. Within a treatment or care center for individuals with developmental disabilities licensed under chapter 25-16;
  - d. Within a group home, a residential child care facility, or an adult foster care facility licensed under section 50-11-01 or North Dakota Administrative Code chapter 75-03-16;
  - e. Within the life skills and transition center, to the extent the individual who provides medications is a direct training technician or a vocational training technician as approved by the department of human services;
  - f. Within a human service center licensed under chapter 50-06; or
  - g. Within a primary or secondary school under a program established under section 15.1-19-23 if the individual has received education and training in medication administration and has received written consent of the student's parent or guardian; or
  - h. Who is an employee of a qualified service provider agency who meets the criteria set forth in subsection 2 of section 50-24.1-18.
10. A nurse currently licensed to practice nursing by another jurisdiction:
    - a. Whose practice in another state requires that nurse to attend orientation, meetings, or continuing education in North Dakota;
    - b. Who serves as a guest lecturer or short-term consultant; or
    - c. Who provides evaluation undertaken on behalf of an accrediting organization.
  11. An individual, including a feeding assistant, performing nonhands-on tasks while employed in a Medicare-funded organization.
  12. A student practicing nursing as part of an out-of-state board-recognized nursing education program, upon written notification to the board and contingent upon clinical site availability.
  13. An individual who is registered on the state department of health nurse aide registry, including a certified nurse aide, home health aide, nurse aide, and medication assistant.

<sup>188</sup> **SECTION 2. AMENDMENT.** Section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-00.1. Definitions.**

As used in this chapter:

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<sup>188</sup> Section 50-11-00.1 was also amended by section 6 of House Bill No. 1102, chapter 404, and section 109 of Senate Bill No. 2124, chapter 391.

1. "Agency foster home for adults" means a residential home in which foster care for adults is regularly provided by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
2. "Approval" means the approval by the department of a home of a Native American family located on a recognized Indian reservation in North Dakota or of a facility owned by the tribe or a tribal member and located on a recognized Indian reservation in North Dakota, not subject to the jurisdiction of the state of North Dakota for licensing purposes, to allow the home or facility to receive title IV-E funding.
- ~~2-3.~~ "Authorized agent" means the county social service board, unless another entity is designated by the department.
- ~~3-4.~~ "Department" means the department of human services.
- ~~4-5.~~ "Facility" means a foster home for adults, agency foster home for adults, family foster home for children, group home, or residential child care facility for children.
- ~~5-6.~~ "Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee thereof ~~of the residence~~ to no more than four children, unless all the children in foster care are related to each other by blood or marriage or unless the department approves otherwise for the placement of siblings, in which case the limitation in this subsection does not apply.
- ~~6-7.~~ "Foster care for adults" means the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour per day basis, in the residential home of a caregiver or agency, to ~~a person an individual~~ age eighteen or older, who is unable, neglects, or refuses to provide for the ~~person's individual's~~ own care.
- ~~7-8.~~ "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a family foster home, group home, or residential child care facility.
- ~~8-9.~~ "Foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee of the residence, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
- ~~9-10.~~ "Group home" means a licensed or approved residence in which foster care is regularly provided to at least four, but fewer than thirteen, unrelated children.
- ~~10-11.~~ "Residential child care facility" means a licensed or approved facility other than an occupied private residence providing foster care to thirteen or more unrelated children, except as may be otherwise provided by rule or regulation.

**SECTION 3. 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 for foster care for adults - Fingerprinting not required.**

1. 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~~ a facility providing foster care for adults and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.
2. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
  - a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
  - b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
  - c. Is excused from providing fingerprints under rules adopted by the department.
3. The department shall verify that sufficient identifying information has been provided. Upon verification, the department shall submit that information to the bureau of criminal investigation.
4. The bureau of criminal investigation shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
5. The department shall pay the cost of securing any criminal history record information made available under chapter 12-60 and section 50-11-06.8 for foster home for adults. An agency foster home for adults is responsible for the cost of securing any criminal history record information made available under chapter 12-60 and section 50-11-06.8.
6. The department shall consult with the bureau of criminal investigation to determine the identifying information, other than fingerprints, appropriate to accomplish a statewide criminal history record investigation.
7. The department may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

<sup>189</sup> **SECTION 4. AMENDMENT.** Section 50-11-06.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-06.8. Criminal history record investigation - Fingerprinting required.**

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<sup>189</sup> Section 50-11-06.8 was also amended by section 9 of House Bill No. 1102, chapter 404.

1. Each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
  - a. Any individual employed by, or providing care in, the facility; and
  - b. Any adult living in the facility, but not being provided care in the facility.
2. The facility shall assure that information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a license request, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
5. Upon request by the operators of a facility, a law enforcement agency shall take fingerprints of persons described in this section if the request is made for purposes of this section.
6. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check for each facility providing foster care for children.
7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
8. Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall secure from a law enforcement agency or any other agency authorized to take fingerprints two sets of fingerprints and all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
  - a. Any individual employed by, or providing care in, ~~an adult family foster care~~ facility providing foster care for adults; and
  - b. Any adult living in ~~an adult family foster care~~ facility providing foster care for adults, but not being provided care in the facility.
9. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11.3-01 and 50-12-03.2.

**SECTION 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 for foster home for adults - When not required.**

A criminal history record investigation may not be required, under section 50-11-06.8 or 50-11-02.4, of a family foster care home for adults licensed or approved on August 1, 1999, for so long as that home remains continuously licensed or approved.

<sup>190</sup> **SECTION 6. AMENDMENT.** Section 50-24.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-18. Personal care option - Basic care facilities - Residential habilitation - Community support services.**

1. 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.
2. The department may implement residential habilitation and community support services in a residential setting or private residence that would allow for the delegation of administration of medication by an employee of a qualified service provider agency. The qualified service provider agency shall employ or contract with a licensed registered nurse to provide supervision to the employees of a qualified service provider agency who are administering routine medications. The employees of a qualified service provider agency shall complete department-approved training on the administration of routine medications before administering routine medications. The department shall adopt rules as are necessary to establish and govern residential habilitation and community support services in a residential setting or private residence.

**SECTION 7. IMPLEMENTATION CONTINGENT UPON APPROPRIATION - APPLICATION.** The department of human services is not required to implement or enforce sections 1, 2, 3, 4, and 6 of this Act with respect to agency foster home for adults and administration of routine medication if the legislative assembly does not provide an appropriation to support the implementation and enforcement of sections 1, 2, 3, 4, and 6 of this Act.

**SECTION 8. CONTINGENT IMPLEMENTATION - APPLICATION.** The department of human services may not implement residential habilitation and community supports in section 6 of this Act unless the sixty-sixth legislative assembly provides an appropriation in Senate Bill No. 2012 to support the implementation of residential habilitation and community supports in section 6 of this Act.

Approved March 20, 2019

Filed March 21, 2019

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<sup>190</sup> Section 50-24.1-18 was also amended by section 25 of House Bill No. 1115, chapter 408.



## CHAPTER 406

### SENATE BILL NO. 2245

(Senators Hogan, Bekkedahl, Kreun)  
(Representatives K. Koppelman, Schneider, Schreiber-Beck)

AN ACT to amend and reenact sections 50-11.1-02 and 50-11.1-04, subsection 10 of section 50-11.1-06.2, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.3 and 50-11.1-07.5, subsection 3 of section 50-11.1-17, and subsection 13 of section 50-25.1-02 of the North Dakota Century Code, relating to early childhood services and the definition of a neglected child; and to declare an emergency.

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

<sup>191</sup> **SECTION 1. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-11.1-02. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.
2. "Child care center" means an early childhood program licensed to provide early childhood services to nineteen or more children.
3. "County agency" means the county social service board in each of the counties of the state.
4. "Department" means the department of human services.
5. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
6. "Early childhood program" means any program licensed under this chapter where early childhood services are provided for at least two hours a day for three or more days a week.
7. "Early childhood services" means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. 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.

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<sup>191</sup> Section 50-11.1-02 was also amended by section 110 of Senate Bill No. 2124, chapter 391.

- c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to ~~subsection 1 of section 15.1-06-06~~15.1-06-06.1.
  - d. Child care, preschool, and prekindergarten services provided to children under six years of age 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, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on 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 children under six years of age 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. Head start and early head start programs that are federally funded and meet federal head start performance standards.
  - j. Child care provided in a medical facility by medical personnel to children who are ill.
8. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
  9. "Group child care" means a child care program licensed to provide early childhood services for thirty or fewer children.
  10. "Household member" means an adult living in the private residence out of which a program is operated, regardless of whether the adult is living there permanently or temporarily.
  11. "In-home provider" means any person who provides early childhood services to children in the children's home.
  12. "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
  13. "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
  14. "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.

15. "Parent" means an individual with the legal relationship of father or mother to a child or an individual who legally stands in place of a father or mother, including a legal guardian or custodian.
16. "Premises" means the indoor and outdoor areas approved for providing early childhood services.
17. "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
18. "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
19. "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
20. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
21. "Registration document" means a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.
22. "School-age child care" means a child care program licensed to provide early childhood services on a regular basis for nineteen or more children aged five years through eleven years.
23. "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.
24. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
25. "Staff member" means an individual:
  - a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration; ~~or~~
  - b. Whose activities involve the care, supervision, or guidance of children ~~for~~of an early childhood program; or
  - c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

<sup>192</sup> **SECTION 2. AMENDMENT.** Section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

<sup>192</sup> Section 50-11.1-04 was also amended by section 1 of Senate Bill No. 2043, chapter 407.

**50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term.**

1. An application for operation of an early childhood program must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all premises to be used by the early childhood program applying for a license. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. The department may use the findings of the investigation to determine licensure. Except as otherwise provided, the department shall grant a license for the operation of an early childhood program within thirty days of receipt of a completed application and all supporting documents by the department and upon a showing:
  - a. The premises to be used are in fit and sanitary condition, are properly equipped to provide for the health and safety for all children, and are maintained according to rules adopted by the department;
  - b. Staff members are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules of the department;
  - c. The application and supporting documents do not include any fraudulent or untrue representations;
  - d. The owner, operator, or applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing history of the owner, operator, or applicant;
  - e. The owner, operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial may not have occurred within the five~~three~~ years immediately preceding the application date;
  - f. The program paid its license fees and any penalties and sanctions assessed against the program as required by sections 50-11.1-03 and 50-11.1-07.4;
  - g. The family child care owner or operator and staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation and, including the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and are currently certified in first aid by a program approved by the department; and
  - h. The group child care, preschool, school-age child care, or child care center, at all times during which early childhood services are provided, staff members have received training and are currently certified in infant

and pediatric cardiopulmonary resuscitation ~~and~~, including the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and currently certified in first aid by a program approved by the department.

2. The license issued to the owner or operator of an early childhood program may not be effective for longer than two years.
3. The department may consider the applicant's past licensing, self-declaration, and registration history in determining whether to issue a license.
4. The department may issue a provisional or restricted license in accordance with the rules of the department. The department shall consider issuing a provisional or restricted license before revoking a license. The department may require the owner or operator of an early childhood program to provide a compliance plan to address compliance issues with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted license. The department shall approve the provisional license if the department approves the compliance plan. The department may revoke a license if the owner and operator fail to comply with the department approved compliance plan or for any additional violations of this chapter or rules of the department.
5. The department shall notify the owner or operator that the owner or operator is required to post a notice of late application at the early childhood program premises if the department has not received a completed application and all supporting documents for licensure or self-declaration renewal at least thirty days before the expiration date of the early childhood program's license.

**SECTION 3. AMENDMENT.** Subsection 10 of section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

10. A~~Unless an individual was separated from childcare employment for more than one hundred eighty days,~~ a criminal history record check conducted under this section and subsection 3 of section 50-06-01.9 is valid for five years, after which the department shall require another criminal history record check.

**SECTION 4. AMENDMENT.** Subsection 1 of section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

1. If the department or the department's authorized agent finds, upon inspection, ~~that~~ the program, self-declaration, or premises is not in compliance with this chapter or the rules adopted under this chapter, the department or the department's authorized agent ~~shall~~may issue a correction order to the program or self-declaration, provided the department does not revoke the license or self-declaration as a result of the noncompliance. The correction order must cite the specific statute or rule violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the program or self-declaration fails to comply with the correction order in a timely fashion. This section does not apply to an applicant's failure to comply with subsection 8 of section 50-11.1-03 or subdivision c of subsection 1 of section 50-11.1-16.

**SECTION 5. AMENDMENT.** Section 50-11.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.3. Reinspections.**

The department or the department's authorized agent shall reinspect or review an early childhood program or holder of a self-declaration ~~that was~~ issued a correction order under section 50-11.1-07.2, at the end of the period allowed for correction. If, upon reinspection or review, the department determines ~~that~~ the program or holder of a self-declaration has not corrected a violation identified in the correction order, the department shall mail to the program or the holder of a self-declaration, by certified mail, a notice of noncompliance with the correction order. The notice must specify the violations not corrected and the penalties assessed in accordance with section 50-11.1-07.5.

**SECTION 6. AMENDMENT.** Section 50-11.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.5. Accumulation of fiscal sanctions.**

An early childhood program or holder of a self-declaration promptly shall ~~promptly~~ notify the department or the department's authorized agent in writing ~~when~~ if a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the department or the department's authorized agent, the daily fiscal sanction assessed for the violation must stop accruing. The department or the department's authorized agent shall reinspect or review the early childhood program or premises out of which the holder of the self-declaration is operating within three working days after receipt of the notification. If, upon reinspection or review, the department determines ~~that~~ a violation has not been corrected, the department shall resume the daily assessment of fiscal sanction and shall add the amount of fiscal sanction which otherwise would have accrued during the period ~~prior to before~~ resumption to the total assessment due from the program or holder of the self-declaration. The department or the department's authorized agent shall notify the facility of the resumption by certified mail. Recovery of the resumed fiscal sanction must be stayed if the operator of the facility makes a written request for an administrative hearing in the manner provided in chapter 28-32; ~~provided, that, if~~ written request for the hearing is made to the department within ten days of the notice of resumption.

<sup>193</sup> **SECTION 7. AMENDMENT.** Subsection 3 of section 50-11.1-17 of the North Dakota Century Code is amended and reenacted as follows:

3. The department may issue a provisional self-declaration document in accordance with the rules of the department. The department shall consider issuing a provisional or restricted self-declaration document before revoking a self-declaration document. The department may require the holder of a self-declaration to provide a compliance plan to address compliance issues with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted self-declaration document. The department shall approve the provisional self-declaration document if the department approves the compliance plan. The department may revoke a self-declaration document if the holder of a self-declaration fails to comply with the department approved compliance plan or for any additional violations of this chapter or rules of the department.

<sup>193</sup> Section 50-11.1-17 was also amended by section 3 of Senate Bill No. 2043, chapter 407.

<sup>194</sup> **SECTION 8. AMENDMENT.** Subsection 13 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

13. "Neglected child" means a deprived child as defined in chapter 27-20 who, due to the action or inaction of a person responsible for the child's welfare:
  - a. Is without proper 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 is not due primarily to the lack of financial means of a person responsible for the child's welfare;
  - b. Has been placed for care or adoption in violation of law;
  - c. Has been abandoned;
  - d. Is without proper 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 a person responsible for the child's welfare, and that such lack of care is not due to a willful act of commission or act of omission, and care is requested by a person responsible for the child's welfare;
  - e. Is in need of treatment and a person responsible for the child's welfare has refused to participate in treatment as ordered by the juvenile court;
  - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
  - g. Is present in an environment subjecting the child to exposure of a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or
  - h. Is a victim of human trafficking as defined in title 12.1.

**SECTION 9. EMERGENCY.** Section 8 of this Act is declared to be an emergency measure.

Approved April 23, 2019

Filed April 24, 2019

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<sup>194</sup> Section 50-25.1-02 was also amended by section 1 of House Bill No. 1108, chapter 416, section 6 of House Bill No. 1520, chapter 256, section 124 of Senate Bill No. 2124, chapter 391, and section 3 of Senate Bill No. 2273, chapter 108.

## CHAPTER 407

### SENATE BILL NO. 2043

(Senators Kreun, G. Lee, Poolman, Hogue)  
(Representatives Beadle, O'Brien)

AN ACT to amend and reenact subsection 1 of section 50-11.1-04, section 50-11.1-07.8, subsection 1 of section 50-11.1-17, and subsection 2 of section 50-25.1-11 of the North Dakota Century Code, relating to regulation of early childhood services and claims of child abuse and neglect.

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

<sup>195</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. An application for operation of an early childhood program must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all premises to be used by the early childhood program applying for a license. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. The department may use the findings of the investigation to determine licensure. Except as otherwise provided, the department shall grant a license for the operation of an early childhood program within thirty days of receipt of a completed application and all supporting documents by the department and upon a showing:
  - a. The premises to be used are in fit and sanitary condition, are properly equipped to provide for the health and safety for all children, and are maintained according to rules adopted by the department;
  - b. Staff members are qualified to fulfill the duties required of ~~them~~the staff members according to the provisions of this chapter and standards prescribed for ~~their~~staff member qualifications by the rules of the department;
  - c. The application and supporting documents do not include any fraudulent or untrue representations;
  - d. The owner, operator, or applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application;

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<sup>195</sup> Section 50-11.1-04 was also amended by section 2 of Senate Bill No. 2245, chapter 406.



- e. The owner, operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial may not have occurred within the five years immediately preceding the application date;
- f. The program paid its license fees and any penalties and sanctions assessed against the program as required by sections 50-11.1-03 and 50-11.1-07.4;
- g. The family child care owner or operator and staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation ~~and, including~~ the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and are currently certified in first aid by a program approved by the department; and
- h. The group child care, preschool, school-age child care, or child care center, at all times during which early childhood services are provided, staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation ~~and, including~~ the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and currently certified in first aid by a program approved by the department.

**SECTION 2. AMENDMENT.** Section 50-11.1-07.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.8. Suspension of license, self-declaration, or registration document - ~~Investigation~~Assessment upon a report of child abuse or neglect - Notification to parent.**

1. The department may:
  - a. Suspend a license, self-declaration, or registration document at any time after the onset of a child abuse and neglect ~~investigation~~assessment alleging the owner or operator, the holder of a self-declaration, or the in-home provider ~~has committed~~;
    - (1) ~~Committed~~ child abuse, including child sexual abuse, ~~or has neglected a child and~~ law enforcement has been involved, ~~if and~~ continued operation is likely to jeopardize the health and safety of the children; or
    - (2) ~~Neglected a child, law enforcement has been involved, and continued operation is likely to jeopardize the health and safety of the children.~~
  - b. Suspend ~~a license, self-declaration, or registration document~~ upon a child abuse or neglect services required determination indicating that a child has been abused or neglected by the owner or operator, the holder of a self-declaration, or the in-home provider, if continued operation is likely to jeopardize the health and safety of the children present.
  - c. Prohibit the presence of an accused owner, operator, holder of a self-declaration, in-home provider, staff member, or adult or minor

household member of the early childhood program, self-declaration, or in-home provider from the early childhood premises when children are in child care, upon a report of child abuse or neglect at the premises of the ~~licensed early childhood~~ program, holder of the self-declaration, or registration, or involving a staff member or adult or minor household member if continued operation or the presence of the accused individual is likely to jeopardize the health and safety of the children present.

2. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department:
  - a. Shall notify the parent of any child receiving early childhood services ~~when~~if that program's license, self-declaration, or registration document is suspended.
  - b. Shall notify the owner, operator, holder of a self-declaration, or in-home provider and shall notify the parent of any child receiving early childhood services ~~when~~if an owner, operator, holder of a self-declaration, in-home provider, ~~adult~~ staff member, or adult or minor household member of the program providing care of the child is ~~under investigation under subsection 4~~the subject of a child abuse and neglect assessment and the department determines:
    - (1) The reported child abuse or neglect places children in the early childhood program, self-declaration, or in-home provider at risk of abuse or neglect; and
    - (2) If the reported child abuse or neglect occurred outside the care, supervision, or guidance of children in an early childhood program, self-declaration, or in-home provider, there was an impact or is a potential impact on care, supervision, or guidance of the children in the early childhood program, self-declaration, or in-home provider.
  - c. Shall notify the owner, operator, holder of a self-declaration, or in-home provider and shall notify the parent of any child receiving early childhood services that a an owner, operator, holder of a self-declaration, in-home provider, staff member, or adult or minor household member is ~~under investigation~~prohibited from the premises of the early childhood program, self-declaration, or in-home provider under subsection 1 ~~if the staff member or household member is a minor.~~
3. Upon the conclusion and disposition of ~~the investigation~~a child abuse and neglect assessment for which a determination services are required is found or for which the department issued a notice under subsection 2, the department shall ~~notify~~provide notification of the disposition to the parent of each child who at the time of the determination is receiving early childhood services of the disposition.
4. Notwithstanding any provision to the contrary, any action taken under this section may preclude an individual's ability to operate pending an appeal.
5. Notwithstanding subsections 2 and 3:
  - a. The department may reconsider a suspension or prohibition.

- b. If law enforcement requests a delay in notification, the department may delay notifying the owner, operator, holder of a self-declaration, or in-home provider and delay notifying the parent of any child receiving early childhood services. To be valid, a law enforcement request for a notification delay must be provided to the department in writing within forty-eight hours of law enforcement receiving notification of an alleged criminal matter. A notification delay may last up to sixty days and, upon request of law enforcement, may be renewed.

<sup>196</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 50-11.1-17 of the North Dakota Century Code is amended and reenacted as follows:

1. Applications for self-declarations must be made on forms provided and in the manner prescribed by the department. The department or the department's authorized agent shall investigate the applicant and every individual living in the private residence and shall conduct a background check. The department or the department's authorized agent shall conduct the investigation in accordance with the rules adopted by the department and shall determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. Except as otherwise provided, the department shall approve a self-declaration within thirty days of receipt of a completed application and all supporting documents by the department and upon the applicant's declaration:
  - a. The premises to be used are in fit and sanitary condition to provide for the health and safety of all children and are maintained according to the standards prescribed by the rules of the department;
  - b. The applicant is able to provide for the health and safety of each child receiving early childhood services from the applicant according to this chapter and standards prescribed by the department as set forth in ~~its~~the rules of the department;
  - c. The applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application;
  - d. The applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial may not have occurred within five years of the application date;
  - e. The applicant has paid the required application fees;
  - f. The applicant has paid any penalties and sanctions assessed against the program required by sections 50-11.1-03 and 50-11.1-07.4;
  - g. The applicant is currently certified in infant and pediatric cardiopulmonary resuscitation ~~and, including~~ the use of an automated external defibrillator by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation and automated external defibrillator training program approved by the department;

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<sup>196</sup> Section 50-11.1-17 was also amended by section 7 of Senate Bill No. 2245, chapter 406.

- h. The emergency designee used by the applicant, if any, is currently certified in infant and pediatric cardiopulmonary resuscitation ~~and, including~~ the use of an automated external defibrillator by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation and automated external defibrillator training program approved by the department;
- i. The applicant is currently certified in first aid through a training program approved by the department; and
- j. The application and supporting documents do not include any fraudulent or untrue representations.

<sup>197</sup> **SECTION 4. AMENDMENT.** Subsection 2 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~The~~In accordance with subsection 3 of section 50-11.1-07.8, the department shall notify the owner, operator, holder of a self-declaration, or in-home provider and shall notify the parent or legally appointed guardian of a child, who at the time of notification is receiving early childhood services under chapter 50-11.1, of the name of the subject and provide a summary of the facts and the results of an assessment conducted under this chapter if the report made under this chapter involves the owner, operator, holder of a self-declaration, or in-home provider; or involves an adult or minor staff member, or adult or minor household member of the early childhood program, ~~the holder of a self-declaration or a household member of the holder of a self-declaration, or the in-home provider or a household member of the in-home provider, who is providing care to the child.~~

Approved April 8, 2019

Filed April 9, 2019

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<sup>197</sup> Section 50-25.1-11 was also amended by section 8 of House Bill No. 1108, chapter 416.

## CHAPTER 408

### HOUSE BILL NO. 1115

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 50-10.2 and two new sections to chapter 50-24.1 of the North Dakota Century Code, relating to furnishing financial information to a facility, definitions for medical assistance for needy persons, and medical assistance claims processing; to amend and reenact subsection 6 of section 50-06-01.9 and sections 50-24.1-01.1, 50-24.1-01.3, 50-24.1-02, 50-24.1-02.1, 50-24.1-02.2, 50-24.1-02.3, 50-24.1-02.5, 50-24.1-02.6, 50-24.1-02.7, 50-24.1-02.8, 50-24.1-02.10, 50-24.1-03.1, 50-24.1-03.2, 50-24.1-03.3, 50-24.1-04, 50-24.1-07, 50-24.1-12, 50-24.1-14, 50-24.1-16, 50-24.1-17, 50-24.1-18, 50-24.1-18.1, 50-24.1-20, 50-24.1-24, 50-24.1-26, 50-24.1-28, 50-24.1-29, 50-24.1-30, 50-24.1-31, 50-24.1-33, 50-24.1-34, 50-24.1-35, 50-24.1-36, and 50-24.1-39 of the North Dakota Century Code, relating to criminal history record checks on Medicaid services applicants, providers, and staff members and medical assistance for needy persons; to repeal sections 50-24.1-01.2, 50-24.1-10, 50-24.1-11, 50-24.1-13, 50-24.1-19, 50-24.1-22, 50-24.1-25, and 50-24.1-27 of the North Dakota Century Code, relating to medical assistance for needy persons; and to provide an effective date.

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

<sup>198</sup> **SECTION 1. AMENDMENT.** Subsection 6 of section 50-06-01.9 of the North Dakota Century Code is amended and reenacted as follows:

6. Medicaid services applicant providers, Medicaid services providers, ~~staff members of the applicant provider or provider,~~ or an individual with a five percent or more direct or indirect ownership interest in the applicant provider or provider under chapter 50-24.1.

**SECTION 2.** A new section to chapter 50-10.2 of the North Dakota Century Code is created and enacted as follows:

#### **Furnishing financial information.**

A facility may request that an applicant for admission, a resident of the facility, or the applicant's or resident's legal representative furnish financial information regarding income and assets, including information regarding any transfers or assignments of income or assets. A facility may deny admission to an applicant for admission who is unable to verify a viable payment source.

**SECTION 3.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

#### **Definitions.**

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<sup>198</sup> Section 50-06-01.9 was also amended by section 80 of Senate Bill No. 2124, chapter 391.

As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of human services.
2. "Medical assistance" means benefits paid under chapter 50-24.1 and title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].
3. "Third party" means an individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under this chapter.

**SECTION 4.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

**Medicaid and Medicare eligible individuals.**

The department may not require prior authorization, additional documentation not required by Medicare, or additional prescription requirements of durable medical equipment and supplies in order to process a claim for Medicaid-eligible individuals who are also eligible for Medicare if an item has been paid by Medicare, unless the item is not covered by Medicaid.

**SECTION 5. AMENDMENT.** Section 50-24.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-01.1. Department to submit plans and seek waivers.**

The department of human services may submit state plans in forms that are consistent with and which meet requirements for such plans which are or may be imposed under the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100-360; 102 Stat. 729; 42 U.S.C. 1396a et seq., as amended]. The department and may take such actions as are reasonably necessary to conform the administration of administer programs under its supervision and direction to the requirements of the Medicare Catastrophic Coverage Act of 1988 and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The department may publish dashboards that demonstrate program utilization and provider care trends. Within the limits of legislative appropriation, the department may seek appropriate waivers of the requirements of the federal statutes or regulations as authorized by federal law.

**SECTION 6. AMENDMENT.** Section 50-24.1-01.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-01.3. Department to comply with federal requirements - Interagency cooperation - Civil money penalty fund.**

1. The department of human services shall take any action necessary to comply with the requirements of section 1919(h) of the federal Social Security Act [42 U.S.C. 1396r(h)], including establishing a process to enforce compliance by nursing facilities with requirements for participation in the medical assistance program that conforms to any federal regulations implementing that section.
2. The state department of health and the department of human services shall cooperate to achieve prompt and effective implementation of subsection 1.

3. The state treasurer shall establish a fund for the receipt of any civil money penalties imposed under subsection 1. Any civil money penalty paid to the department of human services under subsection 1 must be deposited in that fund and, subject to the limits of legislative appropriation, may be expended for the sole purpose of the protection of the health or property of residents of nursing facilities that the state or allowed by the federal government finds deficient.
4. This section may not be construed to create any right or authorize any activity not provided for in section 1919(h) of the federal Social Security Act [42 U.S.C. 1396r(h)] or its implementing federal regulations.
5. Before the establishment and assessment of civil money penalties permitted by section 1919(h) of the federal Social Security Act [42 U.S.C. 1396r(h)], the department of human services is encouraged to submit a plan of alternative remedies in accordance with section 1919(h)(2)(B)(ii) of that Act.

**SECTION 7. AMENDMENT.** Section 50-24.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02. Eligibility.**

Within the limits of legislative appropriations, medical assistance may be paid for any person who either has income and resources insufficient to meet the costs of necessary medical care and services or is eligible for or receiving financial assistance under chapter 50-09 or title XVI of the Social Security Act, as amended, and:

1. Has not at any time before or after making application for medical assistance made an assignment or transfer of property for the purpose of rendering that person eligible for assistance under this chapter. For the purposes of making any determination or redetermination of eligibility, the phrase "assignment or transfer" includes actions or failures to act which effect a renunciation or disclaimer of any interest which the applicant or recipient might otherwise assert or have asserted, or which serve to reduce the amounts which an applicant or recipient might otherwise claim from a decedent's estate, a trust or similar device, or a person obligated by law to furnish support to the applicant or recipient.
2. Has applied or agrees to apply all proceeds received or receivable by that person or that person's eligible spouse from ~~automobile accident medical benefits coverage and private health care~~third-party medical coverage, including health care coverage, accident insurance, and automobile insurance, to the costs of medical care for that person and that person's eligible spouse and children. The department of human services may require from any applicant or recipient of medical assistance the assignment of any rights accruing under ~~automobile medical benefits coverage or private health care~~third-party medical coverage. Any rights or amounts so assigned must be applied against the cost of medical care paid on behalf of the recipient under this chapter. The assignment is not effective as to any carrier before the receipt of notice of assignment by such carrier.
3. Is eligible under rules and regulations established by the department of human services.

**SECTION 8. AMENDMENT.** Section 50-24.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.1. Assignment of claim.**

1. Each applicant or recipient of benefits under this chapter must be deemed to have assigned, to the department of ~~human services~~, any right of recovery the applicant or recipient may have for medical costs incurred under this chapter not exceeding the amount of funds expended by the department for the care and treatment of the applicant or recipient. The applicant or recipient, or other person empowered by law to act in the applicant's or recipient's behalf, shall execute and deliver an assignment of claim, assignment of rights, or other authorizations as necessary to secure fully the right of recovery of the department. The assignment:
  - a. Is effective as to both current and accrued medical support recovery obligations.
  - b. Takes effect upon a determination that an applicant is eligible for assistance under this chapter.
2. The department of ~~human services~~ may compromise claims arising out of assignments made under this section on such terms as it may deem just and appropriate. The department of ~~human services~~ may not be compelled to compromise any claim.

**SECTION 9. AMENDMENT.** Section 50-24.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.2. Community spouse resource allowance.**

In determining eligibility for medical assistance applicants and recipients, the department of ~~human services~~ shall establish a community spouse resource allowance equal to the maximum community spouse resource allowance as provided by 42 U.S.C. 1396r-5(f)(2). This section applies to a community spouse of an institutionalized spouse. For purposes of this section, "institutionalized spouse" includes an individual who is described in 42 U.S.C. 1396a(a)(10)(A)(ii)(VI).

<sup>199</sup> **SECTION 10. AMENDMENT.** Section 50-24.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.3. When designated pre-need funeral service contracts, prepayments, or deposits not to be considered in eligibility determination.**

In determining eligibility for medical assistance, the department of ~~human services~~ may not consider as an available resource any pre-need funeral service contracts, prepayments, or deposits to a fund which total six thousand dollars or less designated by the applicant or recipient as set-aside to pay for the applicant's or recipient's funeral. An applicant or recipient designates a prepayment or deposit for that applicant's or recipient's burial by providing funds that are to be used for the funeral or burial expenses of the applicant or recipient. If an applicant's or recipient's burial is funded by an insurance policy, the amount considered set-aside for burial is the lesser of the cost basis or the face value of the insurance policy. In addition, the applicant or recipient may designate all or a portion of the three thousand dollar asset limitation for funeral pre-need contracts, prepayments, or deposits. Interest or earnings retained in a funeral fund also may not be considered as an available

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<sup>199</sup> Section 50-24.1-02.3 was also amended by section 2 of House Bill No. 1318, chapter 409.



resource. A pre-need funeral service contract, prepayment, or deposit designated under this section is not a multiple-party account for purposes of chapter 30.1-31. Any amount in a pre-need funeral service contract, prepayment, or deposit designated under this section which is not used for funeral or burial expenses must be returned to the estate of the medical assistance recipient and is subject to recovery by the department from the medical assistance recipient's estate. No claim for payment of funeral expenses may be made against the estate of a deceased medical assistance recipient except to the extent that funds maintained in accordance with this section total less than six thousand dollars.

**SECTION 11. AMENDMENT.** Section 50-24.1-02.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.5. Effect of purchase of insurance on disqualifying transfer.**

1. An individual who secures and maintains insurance that covers the cost of substantially all necessary medical care, including necessary care in a nursing home and necessary care for an individual who qualifies for admission to a nursing home but receives care elsewhere, for at least thirty-six months after the date an asset is disposed of, may demonstrate that the asset was disposed of exclusively for a purpose other than to qualify for medical assistance by providing proof of that insurance.
2. If purchased after July 31, 2003, the insurance coverage under this section must include home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage. The coverage required under this subsection must include a daily benefit equal to at least one and fifty-seven hundredths times the average daily cost of nursing care for the year in which the policy was issued and an aggregate benefit equal to at least one thousand ninety-five times that daily benefit.
3. This section applies only to policies purchased before the effective date of an approved amendment to the state plan for medical assistance that provides for a qualified state long-term care insurance partnership under section 1917(b) of the Social Security Act [42 U.S.C. 1396p].
4. ~~The department of human services shall certify to the legislative council the effective date described in subsection 3.~~

**SECTION 12. AMENDMENT.** Section 50-24.1-02.6 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.6. Medical assistance benefits - Eligibility criteria.**

1. The department shall provide medical assistance benefits to otherwise eligible persons who are:
  - a. ~~Medically~~ medically needy persons who have countable income that does not exceed an amount determined under subsection 2; ~~and~~
  - b. ~~Minors who have countable income that does not exceed an amount determined under subsection 3.~~
2. ~~The department of human services shall establish an income level for medically needy persons at an amount; no less than required by federal law;~~

~~that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.~~

- ~~3. The department of human services shall establish income levels for minors, based on the age of the minors, at amounts, no less than required by federal law.~~
4. The department of human services shall provide medical assistance benefits to children and families coverage groups and pregnant women without consideration of assets.
4. The department may require, as a condition of eligibility, individuals eligible for Medicare part A, B, or D to apply for such coverage.

**SECTION 13. AMENDMENT.** Section 50-24.1-02.7 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.7. Workers with disabilities coverage.**

The department of human services shall establish and implement a buyin program to provide medical assistance to an individual who, except for substantial gainful activity, meets the definition of disabled under the supplemental security income program under title XVI of the federal Social Security Act, who is at least sixteen but less than sixty-five years of age, and who is gainfully employed. The program must:

1. Be made available to an individual with a disability who is a member of a family the household with a net income of which is less than two hundred twenty-five percent of the most recently revised official poverty line published by the federal office of management and budget for the family applicable to the household size;
2. Allow up to an additional ten thousand dollars in assets;
3. Require the payment of a premium that is based upon a sliding scale which may not be less than two and one-half percent nor more than seven and one-half percent of the individual's gross countable income;
4. Include a one-time program enrollment fee of one hundred dollars; and
5. Provide that the failure of an enrolled individual to pay premiums for three months may result in the termination of enrollment in the program.

**SECTION 14. AMENDMENT.** Section 50-24.1-02.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.8. Transfers involving annuities.**

1. For purposes of this section, "annuity" means a policy, certificate, contract, or other arrangement between two or more parties under which one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future.
2. ~~An annuity purchased before August 1, 2005, is an available asset and its purchase is an uncompensated assignment or transfer of assets under section~~

~~50-24.1-02, resulting in a penalty under the applicable rules established by the department of human services unless the following criteria are met:~~

- ~~a. The annuity is a single premium immediate annuity or an annuity in which a settlement option has been selected, is irrevocable, and cannot be assigned to another person.~~
  - ~~b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business.~~
  - ~~c. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year.~~
  - ~~d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the life expectancy tables published by the centers for Medicare and Medicaid services.~~
  - ~~e. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly income amount allowed for a community spouse as determined under 42 U.S.C. 1396r-5.~~
3. Unless done in compliance with subsection 4, a provision in an annuity that purports to preclude assignment or transfer of any interest in the annuity is void as against public policy upon application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse for benefits under this chapter. This subsection applies only to an annuity for which a payment option has been irrevocably selected after July 31, 2005.
4. An annuity, purchased after July 31, 2005, and before February 8, 2006, is not an available asset and the expenditure of funds to purchase such an annuity, instrument, or other arrangement may not be considered to be a disqualifying transfer of an asset for purposes of this chapter if:
- a. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
  - b. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
  - c. The monthly payments from all annuities owned by the purchaser that comply with this subsection may not exceed the minimum monthly maintenance needs allowance for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5 and, when combined with the purchaser's other monthly income, at the time of application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse, for benefits under this chapter, do not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5;

- d. ~~The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year;~~
  - e. ~~The annuity will return the full principal and has a guaranteed period that is equal to at least eighty five percent of the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services; and~~
  - f. ~~The annuity does not include any provision that limits the effect of subsection 5.~~
5. ~~Before benefits under this chapter may be provided to an otherwise eligible applicant who is fifty five years of age or older, the department of human services, or the successor of that department, must be irrevocably named on each annuity owned by that applicant, or by the spouse of that applicant, that complies with subsection 4, as primary beneficiary for payment of amounts due following the death of the applicant and the applicant's spouse, if any, not to exceed the amount of benefits paid under this chapter on behalf of that applicant after age fifty five, plus interest on that amount at the legal rate from six months after the applicant's death. If the department receives notice within ninety days of the death of the applicant or the applicant's spouse that reliably demonstrates that the applicant is survived by a minor child who resided and was supported financially by the deceased or by a permanently and totally disabled child, the department shall remit any payments made to the department under this section to those survivors in equal shares. When the obligations to the minor child or children who resided and were supported financially by the deceased or the permanently and totally disabled child or children and the department are fulfilled, the department shall remit any future payments made to the department under this section to the contingent beneficiaries selected by the annuitant regarding each annuity owned by the applicant or by the spouse of the applicant.~~
6. The purchase of an annuity on or after February 8, 2006, or the selection or alteration on or after February 8, 2006, of a payment option for an annuity purchased at any time, is a disqualifying transfer of an asset for purposes of this chapter unless:
- a. The state is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant or the state is named in the second position after the community spouse or minor or disabled child and is named in the first position if the community spouse or a representative of the minor or disabled child disposes of any remainder for less than fair market value;
  - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
  - c. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
  - d. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal

or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year; and

- e. The annuity will return the full principal and interest within the purchaser's life expectancy as determined in accordance with actuarial publications of the office of the chief actuary of the social security administration.

~~7. An annuity purchased on or after February 8, 2006, or a payment option selected or altered on or after February 8, 2006, with respect to an annuity purchased at any time is an asset for purposes of this chapter unless:~~

- ~~a. The annuity meets all of the requirements of subsection 6;~~
- ~~b. The monthly payments from all annuities owned by the purchaser that comply with this subsection do not exceed the minimum monthly maintenance needs allowance for a community spouse of the maximum amount allowed pursuant to 42 U.S.C. 1396r-5 and, at the time of application for benefits under this chapter, the total combined income from all sources of the purchaser and the purchaser's spouse, or the annuitant and the annuitant's spouse, does not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse of the maximum amount allowed pursuant to 42 U.S.C. 1396r-5; and~~
- ~~e. The annuity will return the full principal and has a guaranteed period that is equal to at least eighty-five percent of the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services.~~

~~8.3. Except for the provision in subdivision a of subsection 62, this section does not apply to:~~

- ~~a. An annuity described in subsection b or q of section 408 of the Internal Revenue Code of 1986; or~~
- ~~b. An annuity purchased with proceeds from an:
 
  - ~~(1) An account or trust described in subsection a, c, or p of section 408 of the Internal Revenue Code of 1986;~~
  - ~~(2) A simplified employee pension within the meaning of subsection k of section 408 of the Internal Revenue Code of 1986; or~~
  - ~~(3) A Roth IRA described in section 408A of the Internal Revenue Code of 1986.~~~~

**SECTION 15. AMENDMENT.** Section 50-24.1-02.10 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.10. Real estate taxes on rental property as deduction from rental income.**

For purposes of determining the treatment of income and the application of income to the cost of care for medical assistance eligibility for an individual screened as requiring nursing care services, and who is receiving home and community-based

~~services~~ or nursing care services, the department of ~~human services~~ shall allow as a deduction from countable gross rental income the real estate taxes for rental property if the individual is responsible for paying the real estate taxes for that property.

<sup>200</sup> **SECTION 16. AMENDMENT.** Section 50-24.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-03.1. Duties of county agency.**

In the administration of the medical assistance program, a county agency shall investigate and record the circumstances of each applicant or recipient of assistance, in order to ascertain the facts supporting the application, or the granting of assistance, and obtain such other information as may be required by the rules and regulations of the department of ~~human services~~.

<sup>201</sup> **SECTION 17. AMENDMENT.** Section 50-24.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-03.2. Investigations - Power of county agencies, department, and employees.**

1. In the investigation of applications under the provisions of this chapter, the county agencies, the department of ~~human services~~, and the officials and employees of such agencies charged with the administration and enforcement of this chapter may:
  - a. Conduct examinations;
  - b. Require the attendance of witnesses and the production of books, records, and papers; and
  - c. Make application to the district court of the county to compel the attendance of witnesses and the production of books, records, and papers.
2. The department of ~~human services~~ may request from other state, county, and local agencies information deemed necessary to carry out the medical support enforcement program. All officers and employees of state, county, and local agencies shall cooperate with the department of ~~human services~~ in locating absent spouses or parents of children to whom an obligation of support is owed or on whose behalf assistance is being provided and, on request, shall supply the department with available information relative to the location, income, social security number, and property holdings of the absent spouse or parent, notwithstanding any provision of law making that information confidential. Any person acting under the authority of the department of ~~human services~~ who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the medical support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.

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<sup>200</sup> Section 50-24.1-03.1 was also amended by section 113 of Senate Bill No. 2124, chapter 391.

<sup>201</sup> Section 50-24.1-03.2 was also amended by section 114 of Senate Bill No. 2124, chapter 391.

3. The officers and employees designated by the county agencies or the department of human services may administer oaths and affirmations.

**SECTION 18. AMENDMENT.** Section 50-24.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-03.3. Criminal background investigation - Fingerprinting required.**

1. When the department determines a criminal history record check is appropriate, a provider applicant, a provider, ~~staff members of the applicant provider or provider,~~ or an individual with a five percent or more direct or indirect ownership interest in the provider applicant or provider shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law.
2. The applicant provider or provider shall assure the information obtained under subsection 1 is provided to the department within thirty days of the notice date.
3. The department shall submit the information and fingerprints to the bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant provider, provider, ~~staff members of the applicant provider or provider,~~ or an individual with a five percent or more direct or indirect ownership interest in the provider applicant or provider in accordance with section 12-60-24.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of response, provide the response of the federal bureau of investigation to the department. The bureau also shall provide any criminal history record information that lawfully may be made available under chapter 12-60 to the department.
5. The results of the investigations must be forwarded to the department.
6. Upon request by the applicant provider, provider, ~~staff members of the applicant provider or provider,~~ or an individual with a five percent or more direct or indirect ownership interest in the provider applicant or provider, a law enforcement agency shall take fingerprints of individuals described in this section if the request is made for purposes of this section.
7. The applicant provider, provider, ~~staff members of the applicant provider or provider,~~ or an individual with a five percent or more direct or indirect ownership interest in the provider applicant or provider shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check.
8. The department may charge a fee not to exceed the actual cost for the purpose of processing the background investigations.
9. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the cost of the fingerprinting.
10. The department may use the background information findings to determine approval of Medicaid services provider application or termination of enrollment

as a Medicaid services provider. An individual denied or terminated as a Medicaid service provider as a result of the background investigation may not be qualified to enroll as a provider, have five percent or greater ownership or control interest in a Medicaid services provider, or submit claims for reimbursement through the department's Medicaid management information system.

**SECTION 19. AMENDMENT.** Section 50-24.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-04. Authority of department.**

The department of human services is authorized to promulgate such ~~may~~ adopt rules and regulations as are necessary to qualify for any federal funds available under this chapter.

**SECTION 20. AMENDMENT.** Section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-07. Recovery from estate of medical assistance recipient.**

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
  - a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
  - b. Funeral expenses not in excess of three thousand dollars;
  - c. Expenses of the last illness, other than those incurred by medical assistance;
  - d. Expenses of administering the estate, including attorney's fees approved by the court;
  - e. Claims made under chapter 50-01;
  - f. Claims made under chapter 50-24.5;
  - g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
  - h. Claims made under subsection 4.
2. a. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while



there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.

- b. The department may not file a claim against an estate to recover payments made on behalf of a recipient who was eligible for Medicaid under section 50-24.1-37 and who received coverage through a private carrier.
3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of ~~human services~~ a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of ~~human services~~ is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.
4. A claim of the department of ~~human services~~ made against the decedent's estate of a recipient of medical assistance who was a full-benefit dual-eligible recipient, or against the decedent's estate of the spouse of a deceased recipient of medical assistance who was a full-benefit dual-eligible recipient, must include a claim for an amount equal to the amount required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, which reasonably may be attributable to benefits paid on behalf of the deceased recipient in a month during which the deceased recipient received medical assistance under this chapter and was eligible for Medicare.
5. All assets in the decedent's estate of the spouse of a deceased medical assistance recipient are presumed to be assets in which that recipient had an interest at the time of the recipient's death.
6. To the extent a claim for repayment of medical assistance arises for services provided in months during which the department of ~~human services~~ has in effect an approved state plan amendment that provides for the disregard of assets in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary of an insurance policy under a qualified state long-term care insurance partnership, the department's claim need not be paid out of assets of the decedent's estate of a recipient of medical assistance, or assets of the decedent's estate of the spouse of such a recipient, of a value equal to an amount the estate demonstrates was paid for long-term care provided to the recipient of medical assistance during those months by that insurance policy.
7. For purposes of this section:
  - a. "Full-benefit dual-eligible" has the meaning provided in 42 U.S.C. 1396u-5; and
  - b. "Qualified state long-term care insurance partnership" has the meaning provided in 42 U.S.C. 1396p(b).

**SECTION 21. AMENDMENT.** Section 50-24.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-12. Medical assistance - Services provided by psychologists.**

Within the limits of legislative appropriations, the department of human services shall provide medical assistance to eligible recipients for services provided by psychologists licensed under chapter 43-32.

**SECTION 22. AMENDMENT.** Section 50-24.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-14. Responsibility for expenditures.**

~~Expenditures~~Notwithstanding section 50-24.1-34, expenditures required under this chapter are the responsibility of the federal government or the state of North Dakota.

**SECTION 23. AMENDMENT.** Section 50-24.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-16. Reimbursement of ambulance services.**

1. 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.~~
2. For purposes of classifying ambulance services under this section:
  - a. An emergency response is one that at the time the ambulance is called the ambulance responds immediately. An immediate response is one in which the ambulance begins as quickly as possible to take the steps necessary to respond to the call.
  - b. An advanced life support assessment is an assessment performed by an advanced life support crew as part of an emergency response that was necessary because the patient's reported condition at the time of the dispatch was such that only an advanced life support crew was qualified to perform the assessment. An advanced life support assessment does not necessarily result in a determination that the patient requires an advanced life support level of service.

**SECTION 24. AMENDMENT.** Section 50-24.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-17. Medical assistance for breast or cervical cancer.**

The department of ~~human services~~ may provide medical assistance for ~~women~~individuals 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 most recently revised 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 published by the federal office of management and budget and revised annually in accordance with 42 U.S.C. 9902(2); applicable to a family of the household size involved.~~

<sup>202</sup> **SECTION 25. AMENDMENT.** Section 50-24.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-18. Personal care option – Basic care facilities.**

The department of human services ~~may~~shall 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 23-09.3-04 services.~~

**SECTION 26. AMENDMENT.** Section 50-24.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-18.1. Consumer-directed health maintenance services - Residing at home.**

The department of human services shall provide a personal care services program for eligible medical assistance recipients. The department shall provide an attendant care program to permit health maintenance services authorized under this section to be provided by nonlicensed care providers. Health maintenance services means care that enables an individual to live at home, and which is based upon the determination of a physician which concludes that the individual is medically stable and is competent to direct the care provided by a nonlicensed care provider. Health maintenance services include assistance with the activities of daily living ~~such as getting in and out of bed, wheelchair, or motor vehicle; assistance with routine bodily functions such as bathing and personal hygiene, dressing, and grooming; and feeding, including preparation and cleanup.~~ Health maintenance services also include any other medical, nursing, or home health care services that will maintain the health and well-being of the individual and will allow the individual to remain in the community and which are services that an individual without a functional disability would customarily and personally perform without the assistance of a licensed health care provider, such as catheter irrigation, administration of medications, or wound care.

**SECTION 27. AMENDMENT.** Section 50-24.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-20. Home and community-based living - Choice of options.**

Any aged or disabled individual who is eligible for home and community-based living must be allowed to choose, from among all service options available, the type of service that best meets that individual's needs. To the extent permitted by any applicable waiver, the individual's medical assistance funds must follow the individual for whichever service option the individual selects, not to exceed the cost of the service. ~~The department of human services shall apply for the waivers and grants necessary to implement this section under existing or future federal legislation.~~

**SECTION 28. AMENDMENT.** Section 50-24.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-24. Provider appeals - Definitions.**

1. For purposes of this section:

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<sup>202</sup> Section 50-24.1-18 was also amended by section 6 of House Bill No. 1099, chapter 405.

- a. "Denial of payment" means that the department has denied payment for a medical assistance claim or reduced the level of service payment for a service provided to an individual who was an eligible medical assistance recipient at the time the service was provided or the recoupment or adjustment of a claim, or part of a claim, following an audit or review.
  - b. "Department" means the department of human services.
  - e. "Provider" means an individual, entity, or facility that furnishes medical or remedial services or supplies pursuant to a provider agreement with the department or a third-party billing agency of the provider.
2. A provider may request a review of denial of payment under this section by filing a written request for review with the department within thirty days of the date of the department's denial of the claim ~~apayment~~. ~~The written notice with the department which includes request for review must include the remittance advice or the notice of recoupment or adjustment and a statement of each disputed item and~~ with the reason or basis for the dispute. A provider may not request review under this section of the rate paid for a particular service or for a full or partial denial, recoupment, or adjustment of a claim due to required federal or state changes, payment system defects, or improper claims submission.
  3. Within thirty days after requesting a review, a provider shall provide to the department all documents, written statements, exhibits, and other written information that support the provider's request for review, together with a computation and the dollar amount that reflects the provider's claim as to the correct computation and dollar amount for each disputed item.
  4. The department shall assign to a provider's request for review someone other than any individual who was involved in the initial denial of the claim. A provider who has requested review may contact the department for an informal conference regarding the review anytime before the department has issued its final decision.
  5. The department shall make and issue ~~its~~ a final decision within seventy-five days of receipt of the notice for review, if the department has denied payment for a medical assistance claim or reduced the level of service payment for a service. The department shall make and issue a decision within seventy-five days, or as soon thereafter as possible, of receipt of the notice of request for review, if the department has recouped or adjusted a claim, or part of a claim, following an audit. The department's final decision must conform to the requirements of section 28-32-39. A provider may appeal the final decision of the department to the district court in the manner provided in section 28-32-42, and the district court shall review the department's final decision in the manner provided in section 28-32-46. The judgment of the district court in an appeal from a request for review may be reviewed in the supreme court on appeal by any party in the same manner as provided in section 28-32-49.
  6. Upon receipt of notice that the provider has appealed its final decision to the district court, the department shall make a record of all documents, written statements, exhibits, and other written information submitted by the provider or the department in connection with the request for review and the department's final decision on review, which constitutes the entire record. Within thirty days after an appeal has been taken to district court as provided

in this section, the department shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original and a certified copy of the entire record, and that record must be treated as the record on appeal for purposes of section 28-32-44.

**SECTION 29. AMENDMENT.** Section 50-24.1-26 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-26. Medicaid waiverwaivers - In-home services.**

The department shall ~~apply for and administer~~ Medicaid waiverwaivers to provide in-home services to children with extraordinary medical needs and to children up to the age of fourteen diagnosed with an autism spectrum disorder who would otherwise require hospitalization or nursing facility~~meet institutional level of~~ care. The department may limit the waiver to fifteen participants and may prioritize applicants for the waiver for children with extraordinary medical needs by degree of need.

**SECTION 30. AMENDMENT.** Section 50-24.1-28 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-28. Medical assistance and Medicare prescription drug management program.**

~~The department of human services, with respect to the state medical assistance program, shall develop a plan for the implementation of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1]. The department may purchase the services of an outside consultant to assist in the development of the plan. The requirements of chapter 54-44.4 do not apply to the purchase of the consultant services. The department may not pay for:~~

- ~~1. A prescription drug that is within a class of drugs covered under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1] and which is prescribed to a medical assistance recipient who is also a Medicare beneficiary.~~
- ~~2. A prescription drug that is not covered and for which no drug in its class is covered under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1] and which is prescribed for an individual who is a medical assistance recipient and a Medicare beneficiary unless federal medical assistance matching funds are available at no less than the federal medical assistance percentage and the department determines that the drug is medically necessary for the individual.~~
- ~~3. A prescription drug for which federal medical assistance matching funds are not available except that until February 15, 2006, the department may pay for the drug in an emergency to ensure that a medical assistance recipient who is also a Medicare beneficiary may continue to receive appropriate medications after implementation of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1].~~

**SECTION 31. AMENDMENT.** Section 50-24.1-29 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-29. Insurers to provide certain information to the department of human services.**

1. For purposes of this section:
  - a. "Department" means the department of human services or its agent.
  - b. "Health insurer" includes self-insured plans, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)], service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that legally are responsible by statute, contract, or agreement for payment of a claim for a health care item or service.
  - c. ~~"Medical assistance" means benefits paid under chapter 50-24.1 and title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].~~
2. As a condition of doing business in this state, health insurers shall provide to the department upon its request and in a manner prescribed by the department information about individuals who are eligible for medical assistance so the department may determine during what period the individual or the individual's spouse or dependents may be or may have been covered by a health insurer and the nature of the coverage provided by the health insurer, including the name, address, and identifying number of the plan. Notwithstanding any other provision of law, every health insurer, not more frequently than twelve times in a year, shall provide to the department upon its request information, including automated data matches conducted under the direction of the department, as necessary, to:
  - a. Identify individuals covered under the insurer's health benefit plans who are also recipients of medical assistance;
  - b. Determine the period during which the individual or the individual's spouse or the individual's dependents may be or may have been covered by the health benefit plan; and
  - c. Determine the nature of the coverage.

The insurer must provide the information required in this subsection to the department at no cost if the information is in a readily available structure or format. If the department requests the information in a structure or format that is not readily available, the insurer may charge a reasonable fee for providing the information, not to exceed the actual cost of providing the information.

3. To facilitate the department in obtaining the information required by this section, a health insurer shall:
  - a. Cooperate with the department to determine whether a medical assistance recipient may be covered under the insurer's health benefit plan and is eligible to receive benefits under the health benefit plan for services provided under the medical assistance program.
  - b. Respond to the request for information within ninety days after receipt of written proof of loss or claim for payment for health care services provided to a recipient of medical assistance who is covered by the insurer's health benefit plan.

- c. Accept the department's right of recovery and the assignment to the department of any right of an individual or other entity to payment from a liable third party for an item or service for which payment has been made under the state medical assistance plan.
- d. Respond to any inquiry by the department regarding a claim for payment for any health care item or service that is submitted no later than three years after the date of the provision of the health care item or service.
- e. Agree not to deny a claim submitted by the department solely on the basis of the date of submission of the claim, the type of format of the claim form, or a failure to present proper documentation at the point of sale that is the basis of the claim if:
  - (1) The claim is submitted by the department within the three-year period beginning on the date on which the item or service was furnished; and
  - (2) Any action by the department to enforce its rights with respect to such claim is commenced within six years of the department's submission of the claim.
4. A health insurer is prohibited, in enrolling an individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance.
5. The department may not use or disclose any information provided by the insurer other than as permitted or required by law. The insurer may not be held liable for the release of insurance information to the department or a department agent if the release is authorized under this section.

**SECTION 32. AMENDMENT.** Section 50-24.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-30. Third-party liability recovery.**

1. ~~For purposes of this section:~~
  - a. ~~"Department" means the department of human services.~~
  - b. ~~"Third party" means an individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under this chapter.~~
2. The department shall seek recovery of reimbursement from a third party up to the full amount of medical assistance paid.
- ~~3-2.~~ A medical assistance recipient shall inform the department of any rights the recipient has to third-party benefits and shall inform the department of the name and address of any individual, entity, or program that is or may be liable to provide third-party benefits.
- ~~4-3.~~ A release or satisfaction of a cause of action, suit, claim, counterclaim, demand, judgment, settlement, or settlement agreement is not valid or effectual as against a claim created under this chapter unless the department joins in the release or satisfaction or executes a release of its claim.

- 5-4. The department shall recover the full amount of all medical assistance provided on behalf of a recipient to the full extent of third-party benefits received by the recipient or the department for medical expenses. The department shall recover the third-party benefits directly from any third party or from the recipient or legal representative, if the recipient or legal representative has received third-party benefits, up to the amount of medical assistance provided to the recipient.
- 6-5. An applicant for or recipient of medical assistance shall cooperate in the recovery of third-party benefits.
- 7-6. To enforce its rights to third-party benefits, the department may institute, intervene in, or join any legal or administrative proceeding in its own name.
- a. If either the recipient or the department brings an action against a third party, the recipient or the department must provide to the other within thirty days after commencing the action written notice by personal delivery or registered mail of the action, the name of the court in which the case is brought, the case number of such action, and a copy of the pleadings. If either the department or the recipient brings an action, the other may become a party to or may consolidate an action brought independently with the other.
  - b. A judgment, award, or settlement of a claim in an action by a recipient to recover damages for injuries or other third-party benefits in which the department has an interest may not be satisfied or released without first giving the department notice and a reasonable opportunity to file and satisfy its claim or proceed with any action as otherwise permitted by law.
- 8-7. Any transfer or encumbrance of any right, title, or interest to which the department has a right with the intent, likelihood, or practical effect of defeating, hindering, or reducing recovery by the department for reimbursement of medical assistance provided to a recipient is void and of no effect against the claim of the department.
- 9-8. A recipient who has notice or who has actual knowledge of the department's rights to third-party benefits who receives any third-party benefit or proceeds for a covered illness or injury is either required to pay the department within sixty days after receipt of settlement proceeds the full amount of the third-party benefits up to the total medical assistance provided or to place a sum equal to the full amount of the total medical assistance provided in a trust account pending judicial or administrative determination of the department's right to the third-party benefits.
- 10-9. Notwithstanding any provision in this section to the contrary, the department is not required to seek reimbursement from, or may reduce or compromise a claim against, a liable third party on claims for which the amount it reasonably expects to recover will be less than the cost of recovery or for which recovery efforts will not be cost-effective. Cost-effectiveness is determined based on the following:
- a. Actual and legal issues of liability as may exist between the recipient and the liable party;
  - b. Total funds available for settlement; and



- c. An estimate of the cost to the department of pursuing its claim.

<sup>203</sup> **SECTION 33. AMENDMENT.** Section 50-24.1-31 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-31. Optional medical assistance for families of children with disabilities.**

The department of ~~human services~~ shall establish and implement a buyin program under the federal Family Opportunity Act enacted as part of the Deficit Reduction Act of 2005 [Pub. L. 109-171; 120 Stat. 4; 42 U.S.C. 1396] to provide medical assistance and other health coverage options to families of children with disabilities and whose net income does not exceed two hundred percent of the federal poverty line published by the federal office of management and budget applicable to the household size.

**SECTION 34. AMENDMENT.** Section 50-24.1-33 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-33. Brain injury - Home and community-based services - Outreach activities - Quality control.**

1. As part of the personal care services program for eligible medical assistance recipients and as part of the department's services for eligible disabled and elderly individuals, the department shall provide home and community-based services to individuals who have ~~moderate or severe impairments as a result of a brain injury and meet the functional eligibility criteria for receipt of services.~~ The department shall give priority under this section to individuals whose impairments are less severe or similar to those of individuals who are eligible for Medicaid waivers.
2. ~~The department shall conduct outreach and public awareness activities regarding the availability of home and community-based services to individuals who have moderate or severe impairments as a result of a brain injury.~~
3. The department shall conduct quality control activities and make training available to case managers and other persons providing services to individuals under this section.

**SECTION 35. AMENDMENT.** Section 50-24.1-34 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-34. Processing of claims submitted on behalf of inmates.**

The department of human services shall process claims submitted by enrolled medical providers on behalf of inmates at county jails. Each county shall pay the department for the paid amount for the claims processed and also a processing fee for each claim submission. The department ~~shall~~may establish a processing fee that may not exceed ~~thirty~~fifty dollars and shall update the fee annually on July first. The processing fee must be based on the ~~annual~~actual costs to the department of the claims processing operations divided by the annual volume of claims submitted. The department shall invoice each county for payment of the processing fee. Beginning July 1, 2011, the department of human services shall increase the claims processing

<sup>203</sup> Section 50-24.1-31 was also amended by section 6 of Senate Bill No. 2012, chapter 37.

~~fee to recover the cost of the Medicaid claims system changes. The department shall deposit the portion of the fee associated with recovering the costs of the Medicaid claims system changes in the general fund.~~

**SECTION 36. AMENDMENT.** Section 50-24.1-35 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-35. Department to expand Medicaid coverage. (Contingent effective date—[See note](#))**

~~After implementation of the Medicaid management information system, the~~The department of human services shall ~~expand~~ensure Medicaid coverage to ~~include~~includes Medicaid-covered services provided to an inmate of the ~~state penitentiary~~department of corrections and rehabilitation or a county jail who would be eligible for Medicaid if the inmate were not incarcerated and who is admitted to an inpatient hospital setting.

**SECTION 37. AMENDMENT.** Section 50-24.1-36 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-36. Civil sanction - Costs recoverable - Interest - Appeals.**

1. For purposes of this section:
  - a. "Affiliate" means a person having an overt or covert relationship each with another person in a manner that one person directly or indirectly controls or has the power to control another.
  - b. "Department" means ~~the department of human services.~~
  - e. "Provider" means any individual or entity furnishing Medicaid services under a provider agreement with the ~~department of human services.~~
2. A provider, an affiliate of a provider, or any combination of provider and affiliates, is liable to the department for up to twenty-five percent of the amount the department was induced to pay as a result of each act of fraud or abuse. This sanction is in addition to the applicable rules established by the department.
3. A provider, an affiliate of a provider, or any combination of provider and affiliates, is liable to the department for up to five thousand dollars on each act of fraud or abuse which did not induce the department to make an erroneous payment. This sanction is in addition to the applicable rules established by the department.
4. A provider, an affiliate of a provider, or any combination of provider and affiliates, that is assessed a civil sanction by the department also shall reimburse the department investigation fees, costs, and expenses for any investigation and action brought under this section.
5. Unless otherwise provided in a judgment entered against a provider or against an affiliate of the provider, overpayments and sanctions accrue interest at the legal rate beginning thirty days after the department provides written notice to the provider or the affiliate of the provider.

6. a. A provider or an affiliate of a provider who is assessed a sanction may request a review of the sanction by filing within thirty days of the date of the department's notice of sanction a written notice with the department which includes a statement of each disputed item and the reason or basis for the dispute.
  - b. A provider or an affiliate of a provider may not request review under this section if the sanction imposed is termination or suspension and the notice of sanction states that the basis for the sanction is either:
    - (1) The provider's or affiliate's failure to meet standards of licensure, certification, or registration where those standards are imposed by state or federal law as a condition to participation in the Medicaid program; or
    - (2) The provider or affiliate has been similarly sanctioned by the Medicare program or by another state's Medicaid program.
  - c. Within thirty days after requesting a review, a provider or affiliate shall provide to the department all documents, written statements, exhibits, and other written information that supports the request for review.
  - d. The department shall assign a provider's or affiliate's request for review to someone other than an individual who was involved in imposing the sanction. A provider or affiliate who has requested review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
  - e. The department shall make and issue its final decision within seventy-five days of receipt of the notice of request for review. The department's final decision must conform to the requirements of section 28-32-39. A provider or affiliate may appeal the final decision of the department to the district court in the manner provided in section 28-32-42, and the district court shall review the department's final decision in the manner provided in section 28-32-46. The judgment of the district court in an appeal from a request for review may be reviewed in the supreme court on appeal by any party in the same manner as provided in section 28-32-49.
  - f. Upon receipt of notice that the provider or affiliate has appealed its final decision to the district court, the department shall make a record of all documents, written statements, exhibits, and other written information submitted by the provider, affiliate, or the department in connection with the request for review and the department's final decision on review, which constitutes the entire record. Within thirty days after an appeal has been taken to district court as provided in this section, the department shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original and a certified copy of the entire record, and that record must be treated as the record on appeal for purposes of section 28-32-44.
7. Determinations of medical necessity may not lead to imposition of remedies, duties, prohibitions, and sanctions under this section.

8. The remedies, duties, prohibitions, and sanctions of this section are not exclusive and are in addition to all other causes of action, remedies, penalties, and sanctions otherwise provided by law or by provider agreement.
9. The state's share of all civil sanctions, investigation fees, costs, expenses, and interest received by the department under this section must be deposited into the general fund.

**SECTION 38. AMENDMENT.** Section 50-24.1-39 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-39. Behavioral health services - Licensed marriage and family therapists.**

Beginning January 1, 2016, the department of ~~human services~~ shall allow licensed marriage and family therapists to enroll and be eligible for payment for behavioral health services provided to recipients of medical assistance, subject to limitations and exclusions the department determines necessary.

**SECTION 39. REPEAL.** Sections 50-24.1-01.2, 50-24.1-10, 50-24.1-11, 50-24.1-13, 50-24.1-19, 50-24.1-22, 50-24.1-25, and 50-24.1-27 of the North Dakota Century Code are repealed.

**SECTION 40. EFFECTIVE DATE.** Section 4 of this Act becomes effective on January 1, 2020.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 409

### HOUSE BILL NO. 1318

(Representatives Lefor, Blum, Holman, Johnston)  
(Senators Hogan, Klein, Poolman)

AN ACT to amend and reenact sections 43-10.1-03.1 and 50-24.1-02.3 of the North Dakota Century Code, relating to Medicaid assets exempt for funeral expenses.

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

**SECTION 1. AMENDMENT.** Section 43-10.1-03.1 of the North Dakota Century Code 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

1. If 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 wherein which the service or property was sold are specifically included, regardless of whether ~~or not~~ the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section.
  - a. 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/individual 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/individual 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.
  - b. 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~~ to pay for a funeral and recognized as an

allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered, ~~plus the portion of the three thousand dollar asset limitation the purchaser designates for funeral expenses.~~ 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 ~~from~~ which 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.

2. 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~~ individual for whose benefit payment is made, and any other pertinent information.
3. 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.

<sup>204</sup> **SECTION 2. AMENDMENT.** Section 50-24.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.3. When designated pre-need funeral service contracts, prepayments, or deposits not to be considered in eligibility determination.**

1. In determining eligibility for medical assistance, the department of human services may not consider as an available resource any pre-need funeral service contracts, prepayments, or deposits to a fund which ~~total six thousand dollars or less are placed in an irrevocable itemized funeral contract designated by the applicant or recipient as set-aside to pay for the applicant's or recipient's funeral.~~
2. An applicant or recipient designates a prepayment or deposit for that applicant's or recipient's burial by providing funds that are ~~to~~ must be used for the funeral or burial expenses of the applicant or recipient. If an applicant's or recipient's burial is funded by an insurance policy, the amount considered set-aside for burial is the lesser of the cost basis or the face value of the insurance policy. ~~In addition, the applicant or recipient may designate all or a portion of the three thousand dollar asset limitation for funeral pre-need contracts, prepayments, or deposits.~~ Interest or earnings retained in a funeral fund also may not be considered as an available resource.
3. A pre-need funeral service contract, prepayment, or deposit designated under this section is not a multiple-party account for purposes of chapter 30.1-31. Any amount in a pre-need funeral service contract, prepayment, or deposit designated under this section which is not used for funeral or burial expenses must be returned to the estate of the medical assistance recipient and is subject to recovery by the department from the medical assistance recipient's

<sup>204</sup> Section 50-24.1-02.3 was also amended by section 10 of House Bill No. 1115, chapter 408.

estate. ~~No~~A claim for payment of funeral expenses may not be made against the estate of a deceased medical assistance recipient except to the extent ~~that~~the funds are maintained in accordance with this ~~section~~ total less than six thousand dollars~~chapter~~.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 410

### HOUSE BILL NO. 1194

(Representative Keiser)  
(Senator Heckaman)

AN ACT to create and enact section 50-24.1-40 of the North Dakota Century Code, relating to medical assistance tribal health care coordination agreements; to provide for a report to the legislative management; to provide a continuing appropriation; and to declare an emergency.

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

**SECTION 1.** Section 50-24.1-40 of the North Dakota Century Code is created and enacted as follows:

#### **50-24.1-40. Medical assistance - Tribal health care coordination agreements - Continuing appropriation - Report to legislative management.**

1. As used in this section:
  - a. "Care coordination agreement" means an agreement between a health care provider and tribal health care organization which will result in one hundred percent federal funding for eligible medical assistance provided to an American Indian.
  - b. "Tribal health care organization" means Indian health services or a tribal entity providing health care under the federal Indian Self-Determination and Education Assistance Act of 1975 [Pub. L. 93-638; 88 Stat. 2203; 25 U.S.C. 5301 et seq.].
2. The department of human services shall facilitate care coordination agreements. Of any federal funding received in excess of the state's regular share of federal medical assistance funding which results from care coordination agreements, the department shall deposit sixty percent in the tribal health care coordination fund and forty percent in the general fund.
3. There is created in the state treasury a tribal health care coordination fund.
  - a. Moneys in the fund are appropriated to the department on a continuing basis for distribution to a tribal government in accordance with an agreement between the department and a tribal government. The agreement between the department and a tribal government must require the tribe to:
    - (1) Use the money distributed under this section for health-related purposes. Health-related purposes may include population health programs or services, marketing or education related to health-related programs or services, or developing or enhancing community health representative programs or services. Health-related purposes may not include capital construction, stipends to individuals for services, or



services that are covered by Indian health services, Medicaid, or other third-party payers, or state-funded programs.

- (2) Submit to the department annual reports detailing the use of the money distributed under this section.
  - (3) Submit to the department every two years an audit report, conducted by an independent licensed certified public accountant, of the tribal government use of the money distributed under this section. A tribal government may use money distributed under this section to pay for this audit report. At the discretion of a tribal government, an audit may be conducted more often than every two years.
- b. The distribution of moneys from the fund to a tribal government must be in proportion to the federal funding received from care coordination agreement requests for services originating from within that tribal nation.
  - c. At least annually, upon completion of any auditing and verification actions of the department, the department shall distribute moneys from the fund to the tribal government.
  - d. If a tribal government fails to file with the department a timely annual report or audit report, the department shall withhold distribution of moneys from the fund to the tribal government until the report is filed.
  - e. If an audit report or the department's review of the annual report finds a tribal government used moneys distributed from the fund for a purpose inconsistent with this section, the department shall withhold future distributions to that tribal government in an amount equal to the money used improperly. The department shall distribute money withheld from a tribal government under this subdivision if a future audit report indicates moneys distributed from the fund are used for purposes consistent with this section.
4. Before August of each even-numbered year, the department shall compile and summarize the annual reports and audit reports from the participating tribal governments and provide the legislative management with a biennial report on the fund and tribal government use of money distributed from the fund.

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

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 411

### HOUSE BILL NO. 1515

(Representatives Mitskog, Schneider)  
(Senators Heckaman, Mathern)

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance coverage for pregnant women; and to provide an availability 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 benefits - Pregnant women.**

The department shall seek the necessary approval from the centers for Medicare and Medicaid services to expand medical assistance coverage for pregnant women with income below one hundred sixty-two percent of the federal poverty level.

**SECTION 2. AVAILABILITY DATE.** If the department of human services is able to obtain the necessary approval to expand medical assistance coverage in accordance with section 1 of this Act, the expanded medical assistance coverage for pregnant women becomes available January 1, 2020.

Approved April 4, 2019

Filed April 5, 2019

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**CHAPTER 412****HOUSE BILL NO. 1124**

(Representative Weisz)  
(Senator J. Lee)

AN ACT to create and enact a new subsection to section 50-24.4-15 of the North Dakota Century Code, relating to nursing home rate setting.

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

**SECTION 1.** A new subsection to section 50-24.4-15 of the North Dakota Century Code is created and enacted as follows:

The department shall include in the ratesetting system for nursing homes those costs associated with computer software and any related technology, including cloud-based services. These expenses are allowed as a direct passthrough.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 413

### SENATE BILL NO. 2243

(Senators J. Lee, Anderson, Kreun)  
(Representatives Beadle, M. Johnson)

AN ACT to amend and reenact subsection 3 of section 50-24.6-04 of the North Dakota Century Code, relating to prior authorization for medical assistance.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 50-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

3. a. For individuals twenty-one years of age and older, except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, or generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, the department may not prior authorize the following medication classes:
  - (1) Antipsychotics;
  - (2) Antidepressants;
  - (3) Anticonvulsants;
  - (4) Antiretrovirals, for the treatment of human immunodeficiency virus;
  - (5) Antineoplastic agents, for the treatment of cancer; and
  - (6) Stimulant medication used for the treatment of attention deficit disorder and attention deficit hyperactivity disorder, except an individual who prescribes this medication at a rate two times higher than the rate of the top ten prescribers excluding the top prescriber may be subject to prior authorization.
- b. For individuals under twenty-one years of age, except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, or generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, the department may not prior authorize the following medication classes:
  - (1) Antipsychotics;
  - (2) Antidepressants;
  - (3) Anticonvulsants;

- 
- (4) Antiretrovirals, for the treatment of human immunodeficiency virus;
  - (5) Antineoplastic agents, for the treatment of cancer; and
  - (6) Stimulant medication used for the treatment of attention deficit hyperactivity disorder.
- c. The restrictions of subdivision b do not apply for individuals under twenty-one years of age, who have five or more concurrent prescriptions for psychotropic medications.
- d. Prior authorization for individuals under twenty-one years of age is required for five or more concurrent prescriptions for antipsychotics, antidepressants, anticonvulsants, benzodiazepines, mood stabilizers, sedative, hypnotics, or medications used for the treatment of attention deficit hyperactivity disorder. The department shall grant authorization to exceed the limits after a prescriber requesting authorization consults with a board certified pediatric psychiatrist approved by the department.
- e. The restrictions of this subsection do not apply if prior authorization is required by the centers for Medicare and Medicaid services.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 414

### HOUSE BILL NO. 1033

(Legislative Management)  
(Human Services Committee)

AN ACT to create and enact a new section to chapter 50-24.7 of the North Dakota Century Code, relating to an expanded service payments for elderly and disabled pilot project on intensive care coordination.

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

**SECTION 1.** A new section to chapter 50-24.7 of the North Dakota Century Code is created and enacted as follows:

#### **Intensive care coordination - Pilot project.**

The department may establish an intensive care coordination pilot project under the home and community-based service options for older adults and individuals with physical disabilities.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 415

### SENATE BILL NO. 2347

(Senators K. Roers, Hogan, J. Lee)  
(Representatives Boschee, Rohr, Schneider)

AN ACT to provide for liability for false medical assistance claims and to provide for a Medicaid fraud control unit; and to provide a penalty.

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

##### SECTION 1.

##### **Definitions.**

As used in this Act, unless the context otherwise requires:

1. "Benefit" means the provision of anything of pecuniary value under the Medicaid program.
2. "Claim" means:
  - a. Any request or demand, whether under a contract or otherwise, for money or property under the Medicaid program regardless of whether the state has title to the money or property which is:
    - (1) Presented to an officer, employee, or agent of the state; or
    - (2) Made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state:
      - (a) Provides or has provided any portion of the money or property requested or demanded; or
      - (b) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.
  - b. A claim does not include requests or demands for money or property the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property.
3. "Department" means the department of human services.
4. "Document" means an application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, or other form.
5. "Fraud" means any conduct or activity prohibited by law or rule involving knowing conduct or omission to perform a duty that results in or may result in payments to which the person is not entitled.

6. "Knowingly" means "knowingly" as defined in section 12.1-02-02.
7. "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
8. "Medicaid agency" means an agency or entity of state, county, or local government which administers any part of the Medicaid program, whether under direct statutory authority or under contract with an authorized agency of the state or federal government.
9. "Misappropriation of patient property" means exploitation, deliberate misplacement, or wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by the patient or the patient's designated representative. The term includes conduct with respect to a patient's property, which would constitute a criminal offense under chapter 12.1-23.
10. "Obligation" means an established duty, whether fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.
11. "Patient abuse" means the willful infliction of physical or mental injury of a patient or unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or mental anguish of a patient. The term includes conduct with respect to a patient which would constitute a criminal offense under chapter 12.1-16, 12.1-17, 12.1-18, 12.1-20, or 12.1-22.
12. "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission, to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental illness if an omission is not caused by factors beyond the person's control or by good-faith errors in judgment. The term includes conduct with respect to a patient which would constitute a criminal offense under section 12.1-17-03.
13. "Provider" means a person that furnishes items or services for which payment is claimed under the Medicaid program.
14. "Record" means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:
  - a. Pertaining to the provision of treatment, care, services, or items to a recipient;
  - b. Pertaining to the income and expenses of the provider; or
  - c. Otherwise relating to or pertaining to a determination of entitlement to payment or reimbursement under the Medicaid program.

## **SECTION 2.**

### **Liability for certain acts - Civil penalty.**

1. Except as provided in subsections 2 and 3, a person is liable to the state for a civil penalty of not less than one thousand dollars and not more than ten thousand dollars for each act specified in this section, three times the amount



of damages the state sustains because of the person's act, and costs of the investigation and litigation fees, if the person:

- a. Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
  - b. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
  - c. Conspires to commit a violation of this section;
  - d. Has possession, custody, or control of public property or money used or to be used by the state and knowingly delivers or causes to be delivered less than all of that money or property;
  - e. Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and, with the intent to defraud the state, makes or delivers a receipt without completely knowing the information on the receipt is true; or
  - f. Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state.
2. The court may assess not less than two times the amount of damages the state sustains because of the act of the person and the person is liable to the state for the costs of the civil action brought to recover any such penalty or damages if the court finds:
- a. The person committing the act furnished the attorney general with all information known to that person about the act within thirty days after the date on which the person first obtained the information;
  - b. The person fully cooperated with any investigation of the act by the attorney general; and
  - c. At the time the person furnished the attorney general with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the violation.
3. If the total claim made or presented by a person under subsection 1 is less than one hundred thousand dollars, the civil penalty for which the person is liable may not be more than fifteen percent of the total claim submitted.

### **SECTION 3.**

#### **Limitation of actions.**

1. A civil action filed under this Act must be brought by the later of:
  - a. Six years after the date on which the violation was committed; or

- b. Three years after the date facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances.
2. An action may not be brought pursuant to subdivision b of subsection 1 more than ten years after the date on which the violation was committed.

#### **SECTION 4.**

##### **Investigation and action by attorney general.**

The attorney general's Medicaid fraud control unit shall investigate an alleged violation of this Act and may file a civil action, a criminal action, or both against any person that violated or is violating this Act.

#### **SECTION 5.**

##### **Burden of proof.**

The standard of proof in a civil action brought under this Act is the preponderance of the evidence.

#### **SECTION 6.**

##### **Effect of criminal conviction.**

A defendant convicted in any criminal proceeding under this Act is precluded from subsequently denying the essential elements of the criminal offense of which the defendant was convicted in any civil proceeding. For purposes of this section, a conviction may result from a verdict or plea of guilty.

#### **SECTION 7.**

##### **Costs and attorney's fees.**

If the state favorably settles or prevails in a civil action in which the state intervened or filed, the state is entitled to be awarded reasonable expenses, consultant and expert witness fees, costs, and attorney's fees. In an action in which outside counsel is engaged by the attorney general, the costs and attorney's fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney's fees in prosecuting the action. The expenses, fees, and costs must be awarded against the defendant. The state is not liable for costs, attorney's fees, or other expenses incurred by a person in bringing or defending an action under this Act.

#### **SECTION 8.**

##### **Relief from retaliatory actions.**

1. An employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this Act or other efforts to stop one or more violations of this Act.

2. Relief under subsection 1 includes reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action under this section may be brought in the appropriate district court for the relief provided in this subsection.
3. A civil action under this section may not be brought more than three years after the date the retaliation occurred.

## **SECTION 9.**

### **Medicaid fraud control unit.**

The Medicaid fraud control unit is established as a division of the attorney general's office. The Medicaid fraud control unit, which is under the supervision and control of the attorney general, consists of the agents and employees the attorney general considers necessary and appropriate. The Medicaid fraud control unit is a criminal justice agency within the meaning of section 12-60-16.1. Agents designated by the attorney general have peace officer status and authority, including the authority of search, seizure, and arrest. All recovered money will be forwarded to the designated state Medicaid agency for appropriate allocation between the federal government and the general fund. The portion of state match appropriations for the Medicaid fraud control unit will be appropriated from the general fund.

## **SECTION 10.**

### **Powers and duties of Medicaid fraud control unit.**

1. The Medicaid fraud control unit shall:
  - a. Investigate and prosecute under applicable criminal or civil laws fraud and patient abuse or neglect by providers or any other person, including cases referred by the department;
  - b. Review complaints of patient abuse, patient neglect, and misappropriation of patient property and, if appropriate, investigate and initiate criminal or civil proceedings or refer the complaint to another federal, state, or local agency for action;
  - c. Refer to the department for collection and, if appropriate, imposition of appropriate provider administrative actions involving provider overpayments and abuse;
  - d. Communicate and cooperate with and, subject to applicable confidentiality laws, provide information to other federal, state, and local agencies involved in the investigation and prosecution of health care fraud, patient abuse, and other improper activities related to the Medicaid program;
  - e. Transmit to other state and federal agencies, in accordance with law, reports of convictions, copies of judgments and sentences imposed and other information and documents for purposes of program exclusions or other sanctions or penalties under Medicaid, Medicare, or other state or federal benefit or assistance programs;

- f. Recommend to state agencies appropriate or necessary adoption or revision of laws, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the Medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper activities under the Medicaid program; and
  - g. Enter an agreement with the Medicaid agency regarding referrals, information sharing, and improper payment recoveries as provided in title 42, Code of Federal Regulations, part 455, section 23.
2. The Medicaid fraud control unit may:
- a. Initiate criminal prosecutions and civil actions pursuant to subsection 1 in any court of competent jurisdiction in the state;
  - b. Upon request, obtain information and records from applicants, recipients, and providers;
  - c. Subject to applicable federal confidentiality laws and rules and for purposes related to any investigation or prosecution under subsection 1, obtain from the department, local offices of public assistance, and other local, county, or state government departments or agencies records and other information, including applications, provider enrollment forms, claims and reports, individual or entity tax returns, or other information provided to or in the possession of the tax commissioner or the state auditor;
  - d. Refer appropriate cases to federal, other state, or local agencies for investigation, prosecution, or imposition of penalties, restrictions, or sanctions;
  - e. Work cooperatively with federal agencies; and
  - f. Enter agreements with the department and other federal, state, and local agencies in furtherance of the unit's mission.

## **SECTION 11.**

### **Medicaid fraud - Criminal penalty.**

- 1. A person commits a criminal offense under this section if the person knowingly:
  - a. Presents for allowance, for payment, or for the purpose of concealing, avoiding, or decreasing an obligation to pay a false or fraudulent medical assistance claim, bill, account, voucher, or writing to a public agency, public servant, or contractor authorized to allow or pay medical assistance claims;
  - b. Solicits, accepts, offers, or provides any remuneration, including a kickback, bribe, or rebate in exchange for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the Medicaid program;
  - c. Solicits, accepts, offers, or provides any remuneration, including a kickback, bribe, or rebate in exchange for a fee for referring a recipient to

- another provider or arranging for the furnishing of services or items for which payment may be made under the Medicaid program;
- d. Fails or refuses to provide covered medically necessary services to eligible recipients as required with respect to a managed care contract, health maintenance organization contract, or similar contract or subcontract under the Medicaid program; or
  - e. Conspires with another person to commit a violation of this section.
2. Conduct or activity that does not violate or which is protected under the provisions of, or federal regulations adopted under 42 U.S.C. 1395nn and 42 U.S.C. 1320a-7b(b), is not considered an offense under subdivision b of subsection 1, and the conduct or activity must be accorded the same protections allowed under federal laws and regulations.
  3. A person convicted of this offense involving payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims not exceeding one thousand dollars in value is guilty of a class A misdemeanor.
  4. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed one thousand dollars in value, a violation of this Act is a class C felony.
  5. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed ten thousand dollars in value but do not exceed fifty thousand dollars, a violation of this Act is a class B felony.
  6. Notwithstanding subsection 3, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed fifty thousand dollars in value, a violation of this Act is a class A felony.
    - a. For purposes of imposing sentence for a conviction under this Act, the value of payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims involved is the greater of the value of Medicaid payments or benefits received as a result of the illegal conduct or activity or the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claim involved.
    - b. Amounts involved in Medicaid fraud committed pursuant to a common scheme or the same transaction may be aggregated in determining the value involved.
    - c. A person convicted of the offense of Medicaid fraud must be suspended from participation in the Medicaid program:
      - (1) For any period of time not less than one year for a first offense or the person may be permanently terminated from participation in the medical assistance program;

- (2) For any period of time not less than three years for a second offense, or the person may be permanently terminated from participation in the medical assistance program; or
  - (3) Permanently for a third offense.
7. In addition to any other penalty provided by law, a person convicted of Medicaid fraud is not entitled to bill or collect from the recipient, the Medicaid program, or any other third-party payer for the services or items involved and shall repay to the Medicaid program any payments or benefits obtained by any person for the services or items involved.

## **SECTION 12.**

### **Civil investigative demands and subpoenas - Failure to comply - Confidentiality.**

1. If the attorney general, or a designee, has reason to believe a person may be in possession, custody, or control of documentary material or information relevant to an investigation under this Act, the attorney general, or a designee, may, before commencing a civil proceeding under section 5 of this Act, issue in writing and cause to be served upon the person, a civil investigative demand or subpoena requiring the person to, under oath:
  - a. Produce the documentary material for inspection and copying;
  - b. Answer in writing written interrogatories with respect to the documentary material or information;
  - c. Give oral testimony concerning the subject matter of the investigation, including any documentary material or information; or
  - d. Furnish any combination of the material, answers, or testimony.
2. If a civil investigative demand or subpoena is an express demand for product of discovery, the attorney general or a designee shall cause to be served, a copy of such demand upon the person from which the discovery was obtained and shall notify the person to which such demand is issued of the date on which the copy was served.
3. If a person objects to or otherwise fails to comply with a civil investigative demand or subpoena served upon that person under subsection 1, the attorney general may file in the district court a petition for an order to enforce the demand or subpoena. If the court finds the demand or subpoena is proper, the court shall order the person to comply with the demand or subpoena and may grant such injunctive or other relief as may be required until the person complies with the demand or subpoena. Notice of hearing on the petition and a copy of the petition must be served upon the person that may appear in opposition to the petition. If the attorney general prevails in an action brought under this subsection, the court shall award to the attorney general reasonable attorney's fees, costs, and expenses incurred in bringing the action.
4. Any 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 that testified, answered interrogatories, or produced material, or disclosure is authorized by the court.

5. Information obtained by the attorney general or designee may be shared with a person that initiated the action if the attorney general or designee determine it is necessary as part of any investigation under this Act and the person agrees to comply with the confidentiality provisions provided in subsection 4, and unless otherwise provided by state or federal law.

### **SECTION 13.**

#### **Cooperation of governmental agencies with Medicaid fraud control unit.**

All local, county, and state departments and agencies shall cooperate with the Medicaid fraud control unit and the unit's agents and employees to effectuate the purposes of the unit.

### **SECTION 14.**

#### **Authorization to adopt rules.**

The attorney general may adopt rules, pursuant to chapter 28-32, to implement this Act.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 416

### HOUSE BILL NO. 1108

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact three new sections to chapter 50-25.1 of the North Dakota Century Code, relating to child abuse and neglect family services assessments and evidence-based screening tool records; and to amend and reenact section 50-25.1-02, subsection 1 of section 50-25.1-03, sections 50-25.1-05, 50-25.1-05.1, 50-25.1-05.4, 50-25.1-06.1, and 50-25.1-09, subsection 2 of section 50-25.1-11, and subsection 8 of section 50-25.1-15 of the North Dakota Century Code, relating to child abuse and neglect and family services assessments.

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

<sup>205</sup> **SECTION 1. AMENDMENT.** Section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-25.1-02. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "A person responsible for the child's welfare" means an individual who has responsibility for the care or supervision of a child and who is the child's parent, an adult family member of the child, any member of the child's household, the child's guardian, or the child's foster parent; or an employee of, or any person providing care for the child in, a public or private school or child care setting.
2. "Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol ~~abuse~~ ~~or dependence~~ ~~use disorder~~ as defined in the current edition of the "Diagnostic and Statistical Manual of Mental Disorders" published by the American psychiatric association or a maladaptive use of alcohol with negative medical, sociological, occupational, or familial effects.
3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2.
4. "Alternative response assessment" means a child protection response involving substance exposed newborns which is designed to:

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<sup>205</sup> Section 50-25.1-02 was also amended by section 6 of House Bill No. 1520, chapter 256, section 124 of Senate Bill No. 2124, chapter 391, section 8 of Senate Bill No. 2245, chapter 406, and section 3 of Senate Bill No. 2273, chapter 108.



- a. Provide referral services to and monitor support services for a person responsible for the child's welfare and the substance exposed newborn; and
  - b. Develop a plan of safe care for the substance exposed newborn.
5. ~~"Assessment" means a factfinding process designed to provide information that enables a determination to be made that services are required to provide for the protection and treatment of an abused or neglected child.~~
  6. "Authorized agent" means the county social service board, unless another entity is designated by the department.
  6. "Child protection assessment" means a factfinding process designed to provide information that enables a determination to be made that services are required to provide for the protection and treatment of an abused or neglected child and an evidence-based screening tool.
  7. "Children's advocacy center" means a full or associate member of the national children's alliance which assists in the coordination of the investigation in response to allegations of child abuse by providing a dedicated child-friendly location at which to conduct forensic interviews, forensic medical examinations, and other appropriate services and which promotes a comprehensive multidisciplinary team response to allegations of child abuse. The team response may include forensic interviews, forensic medical examinations, mental health and related support services, advocacy, and case review.
  8. "Citizen review committee" means a committee appointed by the department to review the department's provision of child welfare services.
  9. "Department" means the department of human services or its designee.
  10. "Family services assessment" means a child protection services response to reports of suspected child abuse or neglect in which the child is determined to be at low risk and safety concerns for the child are not evident according to guidelines developed by the department and an evidence-based screening tool.
  11. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect when the institution responsible for the child's welfare is a residential child care facility, a treatment or care center for individuals with intellectual disabilities, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.
  - 44-12. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, must be staff members of the public or private agencies they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three members. The

department shall coordinate the organization of local child protection teams on a county or multicounty basis.

- ~~42-13.~~ "Near death" means an act ~~which that~~, as certified by a physician, places a child in serious or critical condition.
- ~~43-14.~~ "Neglected child" means a deprived child as defined in chapter 27-20.
- ~~44-15.~~ "Prenatal exposure to a controlled substance" means use of a controlled substance as defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery ~~efor~~ the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.
- ~~45-16.~~ "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.
- ~~46-17.~~ "State child protection team" means a multidisciplinary team consisting of the designee of the department and, where possible, of a physician, a representative of a child-placing agency, a representative of the state department of health, a representative of the attorney general, a representative of the superintendent of public instruction, a representative of the department of corrections and rehabilitation, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, must be staff members of the public or private agency they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three persons.
- ~~47-18.~~ "Substance exposed newborn" means an infant younger than twenty-eight days of age at the time of the initial report of child abuse or neglect and who is identified as being affected by substance abuse or withdrawal symptoms or by a fetal alcohol spectrum disorder.

**SECTION 2. AMENDMENT.** Subsection 1 of section 50-25.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Any dentist; optometrist; dental hygienist; medical examiner or coroner; tier 1 mental health professional, tier 2 mental health professional, tier 3 mental health professional, or tier 4 mental health professional as defined under section 25-01-01; or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, child care worker, foster parent, police or law enforcement officer, juvenile court personnel, probation officer, division of juvenile services employee, licensed social worker, family service specialist, child care licensor, or member of the clergy having knowledge of or reasonable cause to suspect a child is abused or neglected, or has died as a result of abuse or neglect, shall report the circumstances to the department if the knowledge or suspicion

is derived from information received by that individual in that individual's official or professional capacity. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual adviser.

**SECTION 3. AMENDMENT.** Section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05. Assessment~~Child protection assessment~~ - Alternative response assessment - Family services assessment.**

1. The department, in accordance with rules adopted by the department, immediately shall initiate ~~ana child protection~~ assessment ~~or,~~ alternative response assessment, ~~or family services assessment~~ or cause an assessment, of any report of child abuse or neglect including, when appropriate, the child protection assessment ~~or,~~ alternative response assessment, ~~or family services assessment~~ of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.
2. According to guidelines developed by the department, the department may initiate an alternative response assessment or family services assessment if the department determines initiation is appropriate.
3. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department shall initiate a child protection assessment by contacting the law enforcement agency having jurisdiction over the alleged criminal violation. The department and an appropriate law enforcement agency shall coordinate the planning and execution of ~~the~~the child protection assessment and law enforcement investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. If the law enforcement agency declines to investigate, the department shall continue the child protection assessment to a determination.
4. The department or the law enforcement agency may:
  - a. Refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services.
  - b. Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator.
  - c. Conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.
- 4-5. Except as prohibited under title 42, Code of Federal Regulations, part 2, a medical, dental, or mental health professional, hospital, medical or mental health facility, or health care clinic shall disclose to the department or the department's authorized agent, upon request, the records of a patient or client which are relevant to ~~ana child protection~~ assessment of reported child abuse or neglect or to a services required decision. The department, or the department's authorized agent, shall limit the request for records to the minimum amount of records necessary to enable a determination to be made

or to support a determination of whether services are required to provide for the protection and treatment of an abused or neglected child.

- ~~5-6.~~ The department shall adopt guidelines for case referrals to a children's advocacy center. When cases are referred to a children's advocacy center, all interviews of the alleged abused or neglected child conducted at the children's advocacy center under this section shall be audio-recorded or video-recorded.

**SECTION 4. AMENDMENT.** Section 50-25.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05.1. Services required - How determined.**

Upon completion of the child protection assessment of the initial report of child abuse or neglect, a decision must be made whether services are required to provide for the protection and treatment of an abused or neglected child.

1. This determination is the responsibility of the department.
2. A decision that services are required may not be made ~~whenif~~ the suspected child abuse or neglect arises solely out of conduct involving the legitimate practice of religious beliefs by a parent or guardian. This exception does not preclude a court from ordering that medical services be provided to the child ~~whenif~~ the child's life or safety requires ~~itsuch an order~~ or the child is subject to harm or threatened harm.

**SECTION 5. AMENDMENT.** Section 50-25.1-05.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05.4. Department to adopt rules for review of child protection assessment findings.**

The department shall adopt rules to resolve complaints and conduct appeal hearings requested by the subject of a report of suspected child abuse, neglect, or death resulting from abuse or neglect who is aggrieved by the conduct or result of ~~an~~ child protection assessment.

<sup>206</sup> **SECTION 6. AMENDMENT.** Section 50-25.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-06.1. Caseload standards - Reimbursement.**

The department shall adopt caseload standards establishing minimum staff-to-client ratios for the child protection assessment ~~and~~, alternative response assessment, ~~and family services assessment~~ of reports of child abuse or neglect and the provision of protective services. Within the limits of legislative appropriation, the department shall reimburse its authorized agent, upon claim being made by the authorized agent, for seventy-five percent of additional staff costs caused by the imposition of such caseload standards. Upon a determination that legislative appropriations are insufficient to reimburse each claiming authorized agent in the amount of seventy-five percent of such additional staff costs, the department shall reimburse each claiming authorized agent for that percentage of additional staff costs which the appropriation is sufficient to defray.

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<sup>206</sup> Section 50-25.1-06.1 was repealed by section 139 of Senate Bill No. 2124, chapter 391.

**SECTION 7. AMENDMENT.** Section 50-25.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-09. Immunity from liability.**

Any person, other than the alleged violator, participating in good faith in the making of a report, assisting in an investigation, assisting or furnishing information in ~~ana~~ child protection assessment, assisting or furnishing information in an alternative response assessment, assisting or furnishing information in a family services assessment, or in providing protective services under this chapter or who is a member of the child fatality review panel, is immune from any liability, civil or criminal, except for criminal liability as provided by section 50-25.1-13, that otherwise might result from reporting the alleged case of abuse, neglect, or death resulting from child abuse or neglect. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse, neglect, or death resulting from abuse or neglect must be presumed.

<sup>207</sup> **SECTION 8. AMENDMENT.** Subsection 2 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. The department shall notify the parent or legally appointed guardian of a child receiving early childhood services under chapter 50-11.1 of the name of the subject and provide a summary of the facts and the results of ana child protection assessment conducted under this chapter if the report made under this chapter involves the owner, operator, staff member, or household member of the early childhood program, the holder of a self-declaration or a household member of the holder of a self-declaration, or the in-home provider or a household member of the in-home provider, who is providing care to the child.

<sup>208</sup> **SECTION 9. AMENDMENT.** Subsection 8 of section 50-25.1-15 of the North Dakota Century Code is amended and reenacted as follows:

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 ana child protection assessment of the matter as required by law.

**SECTION 10.** A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

**Family services assessment - Compliance.**

If a family services assessment is initiated as a result of a report of child abuse or neglect, a decision that services are required may not be made if the person responsible for the child's welfare complies with the resulting referred services for the child. The department shall determine whether a person responsible for the child's welfare has complied with the referred services. If the department determines a person responsible for the child's welfare has not complied with the referred services

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<sup>207</sup> Section 50-25.1-11 was also amended by section 4 of Senate Bill No. 2043, chapter 407.

<sup>208</sup> Section 50-25.1-15 was also amended by section 1 of House Bill No. 1285, chapter 417.

for the child, a child protection assessment of the initial report of child abuse or neglect may be completed.

**SECTION 11.** A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

**Family services assessment - Services.**

1. In response to a family services assessment, the department shall provide appropriate referral services to the person responsible for the child's welfare and the children under the same care as may be necessary for the well-being of the children.
2. The department may discharge the powers and duties provided under this section through an authorized agent.

**SECTION 12.** A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

**Evidence-based screening tool records - Confidentiality - Admissibility - Privileged.**

1. Evidence-based screening tool records are confidential and may be only used for conducting a screening, treatment, referral for services, and receiving services.
2. Evidence-based screening tool records are not subject to section 50-25.1-11.
3. The department may release reports, data compilations, analyses, and summaries, which identify or analyze trends.
4. Evidence-based screening tool records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 417

### HOUSE BILL NO. 1285

(Representatives Skroch, Ertelt, Fegley, Johnston, Jones, Karls, Rohr, M. Ruby,  
Schneider)  
(Senators Myrdal, Poolman)

AN ACT to amend and reenact section 50-25.1-15 of the North Dakota Century Code, relating to abandoned infants at certain locations; and to provide for a report to the legislative management.

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

<sup>209</sup> **SECTION 1. AMENDMENT.** Section 50-25.1-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-25.1-15. Abandoned infant - ~~Hospital~~Approved location 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~~who has been abandoned at birth at a hospital or before reaching the age of one year regardless of the location of birth and who has been left with an on-duty staff member at a hospital~~an approved location~~ in an unharmed condition.
  - b. "Approved location" means a hospital or other location as designated by administrative rule adopted by the department.
  - c. "Hospital" means a facility licensed under chapter 23-16.
2. A parent of an infant under the age of one year. or an agent of the parent with the parent's consent. may ~~abandon~~leave the infant with an on-duty staff member at any hospital. An agent of the parent may leave an abandoned infant at a hospital with the parent's consent~~an approved location~~. Neither the parent nor the agent is subject to prosecution under sections 14-07-15 and 14-09-22 for leaving ~~the~~an abandoned infant ~~at a hospital.~~
3. ~~A hospital~~An approved location shall accept an infant ~~abandoned or left~~ under this section. ~~The hospital~~approved location 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~~approved location's return address. If a hospital accepting the infant has the infant's medical history, the hospital is not required to provide the parent or the agent with a medical history form. Neither the parent nor the agent is required to provide any information.
4. ~~The~~If an infant is left at a hospital, the hospital shall provide the parent or the agent with a numbered identification bracelet to link the parent or the agent to

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<sup>209</sup> Section 50-25.1-15 was also amended by section 9 of House Bill No. 1108, chapter 416.

~~the abandoned infant, unless due to birth of the infant, the infant and parent currently have an identification bracelet. 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 approved location~~ 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 approved location~~ shall report to the department, as required by section 50-25.1-03, that an abandoned infant has been left at the ~~hospital approved location~~. The report may not be made before the parent or the agent leaves the ~~hospital approved location~~.
7. ~~The hospital approved location~~ 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 who was left 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 who was left, 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 case involving an infant case~~who was left at an approved location. 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.
10. The state department of health, in coordination with the department of human services, shall develop and implement a public awareness campaign to provide information, public service announcements, and educational materials regarding this section to the public, including medical providers, law enforcement, and social service agencies.

**SECTION 2. REPORT TO LEGISLATIVE MANAGEMENT - ABANDONED INFANTS.** Before July 1, 2020, the state department of health shall report to the legislative management the status and progress of implementing section 1 of this Act.



Approved April 24, 2019

Filed April 24, 2019

## CHAPTER 418

### HOUSE BILL NO. 1107

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 1 of section 50-10.1-03, section 50-25.2-02, subsection 1 of section 50-25.2-03, section 50-25.2-04, subsection 1 of section 50-25.2-05, and sections 50-25.2-12, 50-25.2-13, and 50-25.2-14 of the North Dakota Century Code, relating to the duties of the state long-term care ombudsman and vulnerable adult protective services.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 50-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Investigate and resolve complaints about administrative actions that may adversely affect or may have adversely affected the health, safety, welfare, or personal or civil rights of ~~persons~~individuals in long-term care facilities or ~~persons~~individuals who have been discharged from long-term care facilities within ~~nine months~~one month of the complaint against the facility.

**SECTION 2. AMENDMENT.** Section 50-25.2-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-25.2-02. Adult protective services program - Rules.**

~~The department, with the advice and cooperation of county social service boards,~~ shall develop, administer, and cause to be implemented a program of protective services for vulnerable adults consistent with this chapter. In developing and administering the program, the department, within the limits of legislative appropriation, shall allocate and distribute funds for the purpose of providing adult protective services. All law enforcement agencies, courts of competent jurisdiction, and appropriate state and local agencies shall cooperate in the implementation and enforcement of this chapter. The department may adopt rules in accordance with chapter 28-32 for the purpose of implementing the provisions of this chapter.

**SECTION 3. AMENDMENT.** Subsection 1 of section 50-25.2-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy, or caregiver having knowledge a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, shall report the information to the department, or the department's designee, or to an appropriate law enforcement agency if the knowledge is derived from information received by that individual in that individual's official or professional capacity. A member of the clergy, however, is not required to report the information if the knowledge is derived from information received in the capacity of spiritual adviser. An individual in the position of a long-term care ombudsman is not a mandated

reporter of suspected abuse or neglect. For purposes of this subsection, "medical or mental health professional or personnel" means a professional or personnel providing health care or services to a vulnerable adult, on a full-time or part-time basis, on an individual basis or at the request of a caregiver, and includes a medical examiner, coroner, dentist, dental hygienist, optometrist, pharmacist, chiropractor, podiatrist, physical therapist, occupational therapist, tier 1 through tier 4 mental health professional as defined under section 25-01-01, emergency medical services personnel, hospital personnel, nursing home personnel, congregate care personnel, or any other person providing medical and mental health services to a vulnerable adult.

**SECTION 4. AMENDMENT.** Section 50-25.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.2-04. Referral of complaints concerning long-term care facilities.**

Any report received by the department or the department's designee under section 50-25.2-03 complaining of any administrative action, as defined in section 50-10.1-01, that may adversely affect or may have adversely affected the health, safety, welfare, or personal or civil rights of a resident in a long-term care facility, as defined in section 50-10.1-01, or ~~a person~~ an individual who was discharged from a long-term care facility within ~~nine months~~ one month of the complaint, must be referred to the state long-term care ombudsman for investigation pursuant to ~~chapter 50-10-1.~~

**SECTION 5. AMENDMENT.** Subsection 1 of section 50-25.2-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The department or the department's designee shall immediately evaluate and assess any report received by the department or the department's designee under section 50-25.2-03, including the residence of the alleged vulnerable adult and the circumstances surrounding the report. For the purpose of evaluating a report or providing other adult protective services, the department or the department's designee may:
  - a. Interview the alleged vulnerable adult, with or without notice to the caregiver or any other person, and interview the caregiver and any other ~~person~~ individual who may have knowledge of the circumstances surrounding the report;
  - b. Enter any premises in which the alleged vulnerable adult is an occupant, with the consent of the alleged vulnerable adult or the caregiver;
  - c. Have access to all records of the vulnerable adult:
    - (1) If the vulnerable adult, or the caregiver or legal representative of the vulnerable adult, has authorized the department or the department's designee to have access; ~~or~~
    - (2) If the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize the department or the department's designee to have such access, does not have a legal guardian or other legal representative, and is ~~a person~~ an individual with respect to whom a report was received by the department or the department's designee; ~~and~~ or

- (3) If the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize the department or the department's designee to have such access, the legal guardian or other legal representative is alleged to cause the circumstances surrounding the report, and is an individual with respect to whom a report was received by the department or the department's designee:
- d. Coordinate the assessment and the provision of other adult protective services with other state or local agencies, departments, or institutions, including the agency of the protection and advocacy project, or private agencies, organizations, and professionals providing services necessary or advisable for the vulnerable adult; and
  - e. Request records, except as prohibited under title 42, Code of Federal Regulations, part 2, from a medical, dental, or mental health professional, hospital, medical or mental health facility, or health care clinic regarding a vulnerable adult with respect to whom a report was received by the department or the department's designee. A medical, dental, or mental health professional, hospital, medical or mental health facility, or health care clinic shall disclose to the department or the department's designee, upon request, the records of a patient or client which are relevant to a vulnerable adult evaluation, assessment or other adult protective services. The department, or the department's designee, shall limit the request for records to the minimum amount of records necessary to enable a determination to be made or to support other adult protective services.

**SECTION 6. AMENDMENT.** Section 50-25.2-12 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.2-12. Confidentiality of records - Authorized disclosures.**

All reports made under this chapter and all records and information obtained or generated as a result of the reports are confidential, but must be made available to:

1. A physician who examines a vulnerable adult whom the physician reasonably suspects may have been subject to abuse or neglect if the identity of individuals reporting under section 50-25.2-03 is protected.
2. Authorized staff of the department or the department's designee, law enforcement agencies, and other agencies investigating, evaluating, or assessing the report or providing adult protective services.
3. A person/vulnerable adult who is the subject of a report if the identity of persons/individuals reporting under section 50-25.2-03 is protected.
4. Public officials, and their authorized agents, who require the information in connection with the discharge of their official duties.
5. A court when it determines that the information is necessary for determination of an issue before the court.
6. A person engaged in a bona fide research or auditing purpose if no information identifying the subjects of a report is made available to the researcher or auditor.

7. A guardian or legal representative of the vulnerable adult who is the subject of a report if the identity of individuals reporting under section 50-25.2-03 is protected and the guardian or legal representative is not suspected of abusing or neglecting the vulnerable adult.

**SECTION 7. AMENDMENT.** Section 50-25.2-13 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.2-13. Information, education, and training programs.**

1. ~~The department, in cooperation with county social service boards and law enforcement agencies,~~ shall conduct a public information and education program. The elements and goals of the program must include:
  - a. Informing the public regarding the laws governing the abuse or neglect of vulnerable adults, the voluntary and mandatory reporting authorized by this chapter, and the need for and availability of adult protective services.
  - b. Providing caregivers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caregiver and vulnerable adult relationship.
2. ~~The department, in cooperation with county social service boards and law enforcement agencies,~~ shall institute a program of education and training for the department, the department's designee, and law enforcement agency staff and other persons~~individuals~~ who provide adult protective services.

<sup>210</sup> **SECTION 8. AMENDMENT.** Section 50-25.2-14 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.2-14. Implementation contingent upon appropriation.**

~~The department and county social service boards are~~is not required to implement or enforce this chapter with respect to any region, area, or county of this state if the legislative assembly does not provide an appropriation to support the implementation and enforcement of this chapter within that region, area, or county.

Approved March 20, 2019

Filed March 21, 2019

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<sup>210</sup> Section 50-25.2-14 was also amended by section 126 of Senate Bill No. 2124, chapter 391.

## CHAPTER 419

### SENATE BILL NO. 2289

(Senators J. Lee, Hogan, Poolman)  
(Representatives Beadle, Dockter)

AN ACT to create and enact chapter 50-25.3 of the North Dakota Century Code, relating to family visitation rights.

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

**SECTION 1.** Chapter 50-25.3 of the North Dakota Century Code is created and enacted as follows:

##### **50-25.3-01. Definitions.**

As used in this chapter:

1. "Caregiver" means a person that has assumed the legal responsibility or a contractual obligation for the care of a vulnerable adult or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by a public or private agency, organization, or institution which provides services to, and has assumed responsibility for the care of, a vulnerable adult.
2. "Clergy member" means a member of the clergy or spiritual counselor who has provided a vulnerable adult with religious or spiritual care or who represents a religious organization to which a vulnerable adult is a member.
3. "Family member" means an individual related by blood, marriage, or adoption to a vulnerable adult.
4. "Friend" means an individual who is in a dating relationship with a vulnerable adult or any other individual with whom a vulnerable adult has an established relationship.
5. "Substantial functional impairment" means, because of physical limitations, a substantial incapability of living independently or providing self-care as determined through observation, diagnosis, evaluation, or assessment.
6. "Substantial mental impairment" means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, evaluation, or assessment.
7. "Vulnerable adult" means an adult who has a substantial mental or functional impairment or an adult who is experiencing visitation restrictions while under the care of a caregiver.

**50-25.3-02. Visitation of a vulnerable adult by family members, friends, or clergy member.**

A caregiver may not unreasonably or arbitrarily deny or restrict visitation to a family member, friend, or clergy member or communication or interaction between a vulnerable adult and a family member, friend, or clergy member.

**50-25.3-03. Petition for visitation.**

1. A family member, friend, or clergy member who has had visitation unreasonably or arbitrarily denied or restricted by a caregiver may file with the district court located in the county wherein the vulnerable adult resides a petition to compel visitation.
2. The petition must state:
  - a. The petitioner's relationship to the vulnerable adult;
  - b. Whether the caregiver is unreasonably or arbitrarily denying or restricting visitation between the petitioner and the vulnerable adult; and
  - c. The facts supporting the petitioner's allegation that the caregiver is unreasonably or arbitrarily denying or restricting visitation between the petitioner and the vulnerable adult.
3. The court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, the petitioner shall provide to the caregiver, vulnerable adult, and other interested parties notice of the filing of the petition and of the time and place of hearing.
4. The court shall conduct an in-camera interview of the vulnerable adult to determine the wishes of the vulnerable adult. The in-camera interview may be on the record. The court shall give deference to the vulnerable adult's preference in making decisions.
5. The court may not issue an order compelling visitation if the court finds the vulnerable adult, while having the capacity to evaluate and communicate decisions regarding visitation, expresses a desire to not have visitation with the petitioner.
6. If the court grants the petition for visitation, the court may impose conditions on visitation between the petitioner and the vulnerable adult after consultation with the vulnerable adult and based on the minimum visitation necessary to allow the vulnerable adult to maintain maximum self-reliance and independence. The petitioner is responsible for paying costs associated with the visitation, including transportation and supervision costs. Visitation may not occur in a manner that negatively impacts the medical or treatment needs of the vulnerable adult.
7. The court may prohibit contact between the petitioner and the vulnerable adult when contact is not in the best interest of the vulnerable adult.
8. The court shall impose the cost of filing the petition for visitation and reasonable attorney's fees incurred by the petitioner on the caregiver, if the court finds during a hearing under this section that:
  - a. The caregiver unreasonably or arbitrarily denied or restricted visitation to a family member, friend, or clergy member; and

- b. The caregiver denied or restricted visitation between the petitioner and the vulnerable adult in bad faith.
9. The court may not impose costs or fees under subsection 6 on the vulnerable adult or a caregiver that in good faith denied or restricted visitation to a family member, friend, or clergy member. Costs, fees, or other sanctions imposed under subsection 6 may not be paid from the vulnerable adult's finances or estate.

**50-25.3-04. Expedited hearing.**

If a petition for visitation states the vulnerable adult's health is in significant decline or the vulnerable adult's death may be imminent, the court shall conduct an emergency hearing on the petition as soon as practicable and no later than fourteen days after the date the petition is filed with the court, or at a later date upon a showing of good cause.

Approved March 21, 2019

Filed March 22, 2019



## CHAPTER 420

### SENATE BILL NO. 2106

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 50-29-01, 50-29-02, 50-29-03, 50-29-04, and 50-29-05 of the North Dakota Century Code, relating to the children's health insurance program; to repeal section 50-29-06 of the North Dakota Century Code, relating to a continuing appropriation for grants and donations received for the children's health insurance program; and to provide an effective date.

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

<sup>211</sup> **SECTION 1. AMENDMENT.** Section 50-29-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-29-01. Definitions.**

As used in this chapter:

1. "Children eligible for medical assistance" means the population eligible for Medicaid before the expansion of medical assistance as authorized by the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152].
2. "Children's health insurance program" means a program to provide health assistance to low-income children funded through title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].
- ~~2-3.~~ "County agency" means the county social service board.
- ~~3-4.~~ "Department" means the department of human services.
- ~~4-5.~~ "Plan" means the children's health insurance program state plan.
- ~~5-6.~~ "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.

<sup>212</sup> **SECTION 2. AMENDMENT.** Section 50-29-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-29-02. Duties of the department.**

1. The department shall prepare;

<sup>211</sup> Section 50-29-01 was also amended by section 127 of Senate Bill No. 2124, chapter 391.

<sup>212</sup> Section 50-29-02 was also amended by section 128 of Senate Bill No. 2124, chapter 391.

- a. ~~Prepare~~, submit, and implement the plan that includes determinations of eligibility, based on modified adjusted gross income methodologies as required in 42 U.S.C. 1396a(e)(14);
2. b. Supervise the administration of the children's health insurance program throughout this state;
3. c. ~~Take action, give directions, and adopt~~ Adopt rules and regulations as may be necessary or desirable to carry out the provisions of to qualify for any federal funds available under this chapter;
4. ~~After federal approval of the plan, apply for a federal waiver allowing plan coverage for a family through an employer-based insurance policy if an employer-based family insurance policy is more cost-effective than the traditional plan coverage for the children;~~
5. d. ~~Report annually to the legislative council and describe~~ to the legislative management, as requested, regarding enrollment statistics and, program costs associated with the plan, and any operational updates;
6. e. Reimburse counties for expenses incurred in the administration of the children's health insurance program at rates based upon all counties' total administrative costs; and
7. f. Administer ~~all~~ funds appropriated or made available to the department for the purpose of carrying out the provisions of this chapter.
2. Within the limits of legislative appropriation, the department may submit state plans and may seek appropriate waivers of the requirements of the federal statutes or regulations as authorized by federal law.

<sup>213</sup> **SECTION 3. AMENDMENT.** Section 50-29-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-29-03. Duties of county agency.**

In the administration of the plan, ~~unless the department otherwise establishes eligibility, the~~ county agency shall:

1. ~~Administer the plan under the direction and supervision of the department; and~~
2. ~~Make an investigation and record the circumstances of each applicant, obtaining~~ investigate and record the circumstances of each applicant or recipient of assistance, in order to ascertain the facts supporting the application, or the granting of assistance, and obtain such other information as may be required by the rules and regulations of the department.

**SECTION 4. AMENDMENT.** Section 50-29-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-29-04. Plan requirements.**

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<sup>213</sup> Section 50-29-03 was also amended by section 129 of Senate Bill No. 2124, chapter 391.

The plan:

1. ~~Must be provided through private contracts with insurance carriers; consistent with coverage provided to children eligible for medical assistance in the state; and~~
2. ~~Must allow conversion to another health insurance policy;~~
3. ~~Must be based on an actuarial equivalent of a benchmark plan;~~
4. ~~Must incorporate every state required waiver approved by the federal government;~~
5. ~~Must include community-based eligibility outreach services; and~~
6. Must provide:
  - a. ~~A modified adjusted gross income eligibility limit based on a net income eligibility equivalent of one hundred sixtyseventy-five percent of the poverty line; and~~
  - b. ~~A copayment requirement for each pharmaceutical prescription and for each emergency room visit;~~
  - c. ~~A deductible for each inpatient hospital visit;~~
  - d. Coverage for:
    - (1) ~~Inpatient hospital, medical, and surgical services;~~
    - (2) ~~Outpatient hospital and medical services;~~
    - (3) ~~Psychiatric and substance abuse services;~~
    - (4) ~~Prescription medications;~~
    - (5) ~~Preventive screening services;~~
    - (6) ~~Preventive dental and vision services; and~~
    - (7) ~~Prenatal services; and~~
  - e. ~~A coverage effective date that is~~Current eligibility may be established from the first day of the month, following the date of in which the application and determination of eligibility was received. Retroactive eligibility may be established for the three calendar months that immediately preceded the month in which the application was received even if there is no eligibility in the month of application. Eligibility can be established if all factors of eligibility are met during each month.

**SECTION 5. AMENDMENT.** Section 50-29-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-29-05. Limitations of chapter.**

Health assistance provided under this chapter is not an entitlement. A person does not have a property interest in any health assistance sought or provided under this chapter. If the department estimates that available funds are insufficient to allow participation by additional applicants, the department may take any action appropriate to avoid commitment of funds in excess of available funds, including denying applications and establishing waiting lists, that is not forbidden by title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.] or regulations adopted thereunder. ~~Notwithstanding any other provisions of this chapter, the department may not expend funds for purposes of this chapter which exceed the federal funds available and the corresponding nonfederal share, and if federal children's health insurance program funding decreases, or if federal funding expires, the department may decrease the income eligibility limit to accommodate the decrease inoperate within the federal funding, notwithstanding any other provisions of this chapter available or may terminate the program if federal funding expires.~~

**SECTION 6. REPEAL.** Section 50-29-06 of the North Dakota Century Code is repealed.

**SECTION 7. EFFECTIVE DATE.** This Act becomes effective on January 1, 2020.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 421

### HOUSE BILL NO. 1103

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact two new sections to chapter 50-31 of the North Dakota Century Code, relating to licensure of an opioid treatment medication unit and fees; and to amend and reenact section 50-31-01 and subsection 1 of section 50-31-05 of the North Dakota Century Code, relating to the definition of medication unit and the licensure of substance abuse treatment programs.

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

**SECTION 1. AMENDMENT.** Section 50-31-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-31-01. Definitions.**

1. "Department" means the department of human services.
2. "Medication unit" means a facility established as part of, but geographically separate from, an opioid treatment program, from which a licensed practitioner dispenses or administers an opioid treatment medication or collects samples for drug testing or analysis.
3. "Opioid treatment program" means a program through which medication is dispensed in the treatment of opioid addiction.

**SECTION 2. AMENDMENT.** Subsection 1 of section 50-31-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The department ~~is authorized to~~ may issue licenses to operate substance abuse treatment programs, for a period of ~~two~~ three years, which are found to comply with the provisions of this chapter and rules adopted by the department.

**SECTION 3.** A new section to chapter 50-31 of the North Dakota Century Code is created and enacted as follows:

##### **Opioid treatment medication unit - Licensure required - Rules.**

1. A medication unit may not operate in this state, unless the unit operates under the license of an opioid treatment program and holds:
  - a. A separate registration from the United States department of justice drug enforcement administration; and
  - b. A medication unit license under the department.
2. The department may license a medication unit. A separate license is required for each location at which a medication unit is operated under this section.

3. The department shall adopt rules relating to licensing and monitoring a medication unit, including rules for:
  - a. Standards for approval and maintenance of licensure;
  - b. Assessment of need for a medication unit in the proposed location, including community engagement; and
  - c. Standards of patient care.

**SECTION 4.** A new section to chapter 50-31 of the North Dakota Century Code is created and enacted as follows:

**Fees - Rules.**

An applicant for licensure under this chapter shall submit a one hundred fifty dollar nonrefundable fee with the application. The department shall adopt rules as necessary to implement this section. All fees collected under this section must be paid to the department and must be used to defray the cost of administering and enforcing this chapter.

Approved March 8, 2019

Filed March 8, 2019

# SALES AND EXCHANGES

## CHAPTER 422

### HOUSE BILL NO. 1339

(Representative M. Johnson)  
(Senator Sorvaag)

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to reimbursement for warranty.

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

**SECTION 1.** A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:

#### **Parts, equipment, and accessory dealers reimbursed for warranty repair.**

1. As used in this section:

- a. "Commercial equipment dealer" means a person that engages in the business of:
- (1) Selling, at retail, parts for any new or used commercial motor vehicle, truck, or semitrailer, or vehicular implements, commercial equipment, or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo; or
  - (2) Repairing new or used commercial motor vehicle, truck, or semitrailer parts, or vehicular implements, commercial equipment or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo.
- b. "Commercial distributor" means any person that offers for sale, sells, or distributes to a dealer parts for any new commercial motor vehicle, truck, or semitrailer, or vehicular implements, commercial equipment, or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo.
- c. "Commercial manufacturer" means any person engaged in the business of manufacturing or assembling parts for any new commercial motor vehicle, truck, or semitrailer, or vehicular implements, commercial equipment, or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo.
- d. "Parts" includes essential and nonessential commercial motor vehicle, truck, or semitrailer components.

2. A commercial manufacturer shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor, in warranty work

compensation. In addition, a commercial manufacturer shall provide adequate time allowances for diagnosis and performance of warranty work and service for the work performed. The hourly labor rate paid by a commercial manufacturer to the commercial equipment dealer for warranty services may not be less than the average rate charged by the commercial equipment dealer for like service to nonwarranty customers for nonwarranty service. A commercial manufacturer may not reimburse a commercial equipment dealer for parts used in the performance of warranty repair at a lower rate than the average retail rate customarily charged by the commercial equipment dealer for these parts as provided under subsection 5.

3. A commercial manufacturer shall pay a commercial equipment dealer on a claim made by a commercial equipment dealer under this section within thirty days of the approval of the claim. The commercial manufacturer either shall approve or disapprove a claim within thirty days after the claim is submitted to the commercial manufacturer. The commercial manufacturer may prescribe the manner in which and the forms on which the commercial equipment dealer must present the claim. A claim not specifically disapproved in writing within thirty days after the commercial manufacturer receives the claim must be construed to be approved and the manufacturer shall pay the claim within thirty days.
4. A commercial manufacturer, commercial distributor, or commercial distributor branch shall compensate fully its commercial equipment dealers licensed in this state for warranty parts, work, and service specified in this section. Failure to fully compensate includes a reduction in the amount due to the commercial equipment dealer or imposing a separate charge, surcharge, or other imposition by which the commercial manufacturer seeks to recover the costs of complying with this section from the commercial equipment dealer.
5. The retail rate customarily charged by the commercial equipment dealer for parts is established by the commercial equipment dealer submitting to the commercial manufacturer or commercial distributor one hundred sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or ninety consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring the average percentage markup.
6. The retail rate customarily charged by the commercial equipment dealer for labor must be established using the same process as provided under subsection 5 and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the commercial equipment dealer, the commercial equipment dealer may use the same repair orders to complete each calculation as provided under subsection 5.
7. In calculating the retail rate customarily charged by the commercial equipment dealer for parts and labor, the following work may not be included in the calculation:
  - a. Repairs for commercial manufacturer or commercial distributor special events, specials, or promotional discounts for retail customer repairs;



- b. Parts sold at wholesale; and
  - c. Nuts, bolts, fasteners, and similar items that do not have an individual part number.
8. The average of the parts markup rates and labor rate is presumed to be fair and reasonable and must become effective thirty days following the commercial manufacturer's approval. Not later than thirty days after submission, a commercial manufacturer or commercial distributor may rebut the presumption by reasonably substantiating that a rate is unreasonable in light of the practices of all other commercial equipment dealers in an economically similar area of the state offering the commercial equipment dealer's declaration of the same part, or vehicular implement, equipment, accessory, or attachment unit. If the average parts markup rate or average labor rate, or both are rebutted, the commercial manufacturer or commercial distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.
9. Each commercial manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the commercial equipment dealer's written schedule of hourly labor rates and parts and may not obligate any commercial equipment dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating commercial equipment dealers to engage in transaction-by-transaction or part-by-part calculations.
10. A commercial dealer or commercial manufacturer may demand the average parts markup or average labor rate be calculated using the process provided under subsections 5 and 6; however, the demand for the average parts markup may not be made within twelve months of the last parts markup declaration and the demand for the average labor rate may not be made within twelve months of the last labor rate declaration. If a parts markup or labor rate is demanded by the commercial equipment dealer or commercial manufacturer, the commercial equipment dealer shall determine the repair orders to be included in the calculation under subsections 5 and 6.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 423

### HOUSE BILL NO. 1161

(Representatives B. Koppelman, Beadle, Jones, K. Koppelman, Louser, Schauer)  
(Senators Hogue, Luick, Poolman, Schaible)

AN ACT to create and enact a new section to chapter 51-28 of the North Dakota Century Code, relating to prohibiting inaccurate information from being entered into a telephone caller identification system with the intent to defraud; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 51-28 of the North Dakota Century Code is created and enacted as follows:

##### **Telephone caller identification system fraud - Exceptions - Definitions.**

1. A person may not, in connection with any telecommunications service or internet protocol enabled voice service, knowingly cause any telephone caller identification system to:
  - a. Transmit misleading or inaccurate caller identification information with the intent to defraud or cause harm; or
  - b. Use or display a telephone number the caller does not own or has not received consent to use from the owner of the telephone number.
2. This section does not apply to:
  - a. The blocking of caller identification information;
  - b. A law enforcement agency of the federal, state, county, or municipal government;
  - c. An intelligence or security agency of the federal government;
  - d. A telecommunications, broadband, or voice over internet protocol service provider acting solely as an intermediary for the transmission of telephone service between the caller and the recipient;
  - e. Activity engaged in under a court order that specifically authorizes the use of caller manipulation; or
  - f. A caller who, based on the telephone number called, reasonably believes the recipient of the call is not physically within the state.
3. Any person who receives a call in violation of subsection 1 may bring a civil action in a court of this state in the county in which the call recipient resides to enjoin such action, or for damages, or both. If the plaintiff prevails, the court must award the plaintiff the plaintiff's actual damages or damages in an amount not less than five thousand dollars and not more than ten thousand

dollars per violation, whichever is greater. Each call is a separate violation under this chapter. The court shall award the plaintiff's costs, expenses, and reasonable attorney's fees. The relief provided in this section is in addition to all remedies available to the attorney general under this chapter in any investigation or action brought by the attorney general against the caller in the plaintiff's private action. This section may not be interpreted to limit any other claims the person may have against the caller or any other claims the attorney general may bring under this chapter, chapter 51-15, or any other state or federal laws.

4. In addition to the remedies and penalties provided in this chapter, a person violating subsection 1 is guilty of a class A misdemeanor, and the venue must be in the county in which the call recipient received the call or the county in which the call recipient resides.
5. As used in this section:
  - a. "Call" means any type of telephonic communication made using a public switched telephone network, wireless cellular telephone service, or voice over internet protocol service that has the capability of accessing users on the public switched telephone network or a successor network.
  - b. "Caller" means a person that places a call, whether by telephone, over a telephone line, or on a computer.
  - c. "Defraud" means taking anything of value, including money, property, or time, without consent from the recipient of a call.
  - d. "Telephone caller identification system" means a listing of a caller's name, telephone number, or name and telephone number shown to a recipient of a call when it is received.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 424

### HOUSE BILL NO. 1195

(Representatives Keiser, D. Ruby)

AN ACT to create and enact section 51-07-30 and chapter 51-37 of the North Dakota Century Code, relating to customer contract clauses and the use of certain marketing practices involving automatic renewal; to provide a penalty; and to provide for application.

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

**SECTION 1.** Section 51-07-30 of the North Dakota Century Code is created and enacted as follows:

#### **51-07-30. Customer contract clauses - Billing examples - Enforcement - Penalty.**

1. As used in this section:
  - a. "Customer" means a person that borrows, buys, leases, or obtains services or property under a service contract. The term does not include a government entity.
  - b. "Service contract" means a written agreement between a customer and a party acting in the usual course of business in which a customer borrows, buys, leases, or obtains personal property, real property, or services for valuable consideration.
  - c. "Terms and conditions" means general and special arrangements, provisions, requirements, rules, specifications, and standards that form an integral part of an agreement or contract.
2. If a service contract contains terms and conditions clauses, the service contract must be accepted by the customer for the service contract to be enforceable.
3. If a service contract contains a liquidated damages clause, the clause must provide specific examples of how any fees or charges will be calculated.
4. The attorney general may enforce this section. The attorney general, in enforcing this section, has the powers provided in chapter 51-15 and may seek the remedies in chapter 51-15. Each act in violation of this section constitutes a separate violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this section are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

**SECTION 2.** Chapter 51-37 of the North Dakota Century Code is created and enacted as follows:

#### **51-37-01. Definitions.**

As used in this chapter:

1. "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed for a period of more than one month at the end of a definite period for a subsequent period.
2. "Clear and conspicuous" means in a larger type than the surrounding text, in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size or symbols or other marks, in a manner that clearly calls attention to the language and makes the language readily apparent, readable, and understandable to the person to which the language is disclosed. In the case of an audio disclosure, "clear and conspicuous" means in a volume and cadence sufficient to be readily audible and understandable. A statement that contradicts or is inconsistent with any other information with which the statement is presented is not clear and conspicuous.

### **51-37-02. Use of automatic renewal.**

1. A person that sells or offers to sell merchandise for a specified period under an agreement containing a provision for automatic renewal shall:
  - a. Present the terms of the automatic renewal offer in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in proximity to the offer;
  - b. Provide an acknowledgment that includes the terms of the automatic renewal offer and information regarding how to cancel in a manner which is capable of being retained by the buyer; and
  - c. Provide a cost-effective, timely, and simple procedure for cancellation which must be described in the acknowledgment required by subdivision b.
2. A person that sells or offers to sell merchandise for a specified period under an agreement that contains a provision for automatic renewal for a period of more than six months at the end of the time period specified in the agreement shall provide a clear and conspicuous written notice to the buyer stating the buyer may cancel the contract and avoid automatic renewal.
  - a. The written notice must be provided by:
    - (1) First-class mail;
    - (2) Electronic mail; or
    - (3) Any easily accessible form of communication, including text message or a mobile application, if the consumer specifically authorizes the person to provide notice in such form.
  - b. The written notice must include the procedure for canceling and must be given at least thirty days and not more than sixty days before the date upon which the agreement will be renewed or the expiration of the period for cancellation.

3. If there is a material change in the terms of an agreement that contains a provision for automatic renewal, the seller shall provide the buyer with clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner which is capable of being retained by the buyer.
4. A person that sells or offers to sell merchandise for a specified period under an agreement that contains a provision for automatic renewal may not make or submit any charge to a buyer's credit card, debit card, bank account, account with a third party, or other financial account, unless the person has complied with the requirements of subsection 1 and obtained the buyer's affirmative consent to the agreement containing the terms of the automatic renewal.
5. The renewal period in a provision for automatic renewal of an agreement for sale of merchandise may not exceed twelve months.

#### **51-37-03. Exceptions.**

This chapter does not apply to:

1. The sale of insurance regulated under title 26.1;
2. The sale of public utilities regulated under title 49 or the federal communications commission, or services provided by the public utilities; or
3. A bank, bank holding company, credit union, or other financial institution or trust company regulated under title 6.

#### **51-37-04. Remedies.**

An agreement for sale of merchandise in violation of this chapter is unenforceable and void. If a person sends merchandise as a result of an automatic renewal of agreement without complying with the requirements of section 51-37-02 or sends merchandise after a buyer undertook an affirmative act to cancel or otherwise avoid charges, the merchandise is considered to be an unconditional gift to the buyer who may dispose of the gift in any manner the buyer sees fit without any obligation to the person.

#### **51-37-05. Enforcement - Powers - Remedies - Penalty.**

The attorney general may enforce this chapter. The attorney general, in enforcing this chapter, has the powers provided in chapter 51-15 and may seek the remedies in chapter 51-15. Each act in violation of this chapter constitutes a separate violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

#### **51-37-06. Private enforcement.**

A person aggrieved by a violation of this chapter may bring an action to enjoin the violation or for restitution, or both. The court may award the plaintiff costs, expenses, and reasonable attorney's fees. This section does not limit any other claims the plaintiff may have against a seller subject to this chapter.

**SECTION 3. APPLICATION.** This Act applies to contracts entered after July 31, 2019.

Approved April 8, 2019

Filed April 9, 2019

# SOCIAL SECURITY

## CHAPTER 425

### SENATE BILL NO. 2085

(Government and Veterans Affairs Committee)  
(At the request of Job Service North Dakota)

AN ACT authorizing the state of North Dakota acting through job service North Dakota to sell certain property; and to declare an emergency.

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

**SECTION 1. SALE OF PROPERTY BY JOB SERVICE NORTH DAKOTA - ROLLA PROPERTY.** The state of North Dakota acting through job service North Dakota may sell and convey Parcel #29-0001-29089-000-00006700-2904000000; city of Rolla OTS Lot 17 Block 7 and Parcel #29-0001-29090-000-00006701-2904000000; city of Rolla OTS Lot 18 Block 7 in the city of Rolla, Rolette County, North Dakota. Job service North Dakota may cause this property to be sold in the manner prescribed by sections 54-01-05.1 and 54-01-05.2. The provisions of section 54-01-05.5 do not apply to the sale and conveyance authorized by this Act. Net proceeds from the sale must be used as authorized and directed by law.

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

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 426

### SENATE BILL NO. 2325

(Senators Kreun, Meyer, Schaible)  
(Representatives O'Brien, Owens, Schreiber-Beck)

AN ACT to amend and reenact section 52-02.1-02 of the North Dakota Century Code, relating to new job training for certain businesses; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 52-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **52-02.1-02. Job service North Dakota - Agreements.**

1. Program services developed and coordinated by job service North Dakota must be provided to primary sector businesses found eligible for loans or grants under this chapter. Job service North Dakota may enter into an agreement to establish a project with an employer which meets the following conditions:
  1. a. Sets a date of commencement of the project.
  2. b. Identifies program costs, including deferred costs, which are to be paid from available sources including new jobs credit from withholding to be received or derived from new jobs resulting from the project.
  3. c. Provides for a guarantee by the employer of payment for program costs.
  4. d. Provides that any deferral of program cost payments may not exceed ten years from the date of commencement of the project.
  5. e. Provides that on-the-job training costs for employees may not exceed fifty percent of the annual gross payroll costs of the new jobs in the first full year after the date of commencement of the project. For purposes of this subsection, "gross payroll" is the gross wages and salaries for the new jobs.
  6. f. Provides the maximum amount of new jobs credit from withholding or tuition and fee payments allowed for a project.
  7. g. Provides that every employee participating in the new jobs training program must be paid an income of at least ten dollars per hour, plus benefits, by the end of the first year of employment under the project and for the remaining life of the loan.
2. A project requiring a loan from the department or a community may not be approved, and an agreement may not be executed by job service North Dakota, until notification from the department or community that the employer has qualified for a loan. Upon execution of the agreement, job service North Dakota shall notify the state tax commissioner of the agreement and the



identity of the employer. Job service North Dakota may adopt rules to implement this chapter. Job service North Dakota shall prepare an annual report for the governor and the legislative assembly with respect to the new jobs training program.

3. For purposes of this section and section 52-02.1-04, an employer that is not a primary sector business, but contracts to provide employees to a primary sector business, may qualify for program services if:
  - a. The employer and the primary sector business are parties to the same agreement under this section; and
  - b. The agreement under this section designates the employer as the recipient of the program services.

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

Approved March 26, 2019

Filed March 27, 2019

# SPORTS AND AMUSEMENTS

## CHAPTER 427

### SENATE BILL NO. 2162

(Senators Vedaa, O. Larsen, Osland, J. Roers)  
(Representatives M. Ruby, Vetter)

AN ACT to amend and reenact subsection 16 of section 53-06.1-01, subdivisions a and d of subsection 1 of section 53-06.1-03, subsection 2 of section 53-06.1-11.1, and subsection 3 of section 53-06.1-14 of the North Dakota Century Code, relating to the local permits and prize limits.

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

**SECTION 1. AMENDMENT.** Subsection 16 of section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16. "Permit" means a local permit or ~~charity-local restricted event~~ permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.

**SECTION 2. 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~~ permits. A local permit may allow the organization to conduct only raffles, bingo, or sports pools, ~~or a charity-local. A restricted event permit may allow the organization~~ 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 ~~six~~ eight thousand dollars and total prizes of all games do not exceed ~~twelve~~ forty thousand dollars per year. These maximum prize amounts do not apply to raffles conducted under chapter 20.1-08. The determination of what is a "public-spirited organization" is within the sole discretion of the governing body. An organization shall disclose on the application its intended use of the net income from the gaming activity. A governing body may issue a permit for games to be held at designated times and places.

**SECTION 3. AMENDMENT.** Subdivision d of subsection 1 of section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- d. An organization that has a ~~charity-local restricted event~~ 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 net income to eligible uses referenced by subsection 2 of section 53-06.1-11.1; and
- (5) Shall file a report prescribed by the attorney general with the governing body and attorney general.

**SECTION 4. 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 or an organization that has a ~~charity-localrestricted~~ event permit shall disburse net proceeds within the period prescribed by rule and for only these educational, charitable, patriotic, fraternal, religious, or public-spirited uses:
  - a. Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.
  - b. Uses for developing, promoting, and supporting tourism within a city, county, or the state.
  - c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:
    - (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.
    - (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
    - (3) Assistance to libraries and museums.
    - (4) Assistance for the performing arts and humanities.
    - (5) Preservation of cultural heritage.
    - (6) Youth community, social welfare, and athletic activities.
    - (7) Adult amateur athletic activities within the state, including team uniforms and equipment.
    - (8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.
    - (9) Scientific research.
  - d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:
    - (1) Assistance to an individual or family suffering from poverty or homelessness.

- (2) Encouragement and enhancement of the active participation of the elderly in our society.
  - (3) Services to the abused.
  - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
  - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
  - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
  - (7) Funds for emergency relief and volunteer services.
  - (8) Funds to nonprofit nursing homes, nonprofit day care centers, and nonprofit medical facilities.
  - (9) Social services and education programs aimed at aiding emotionally and physically distressed, handicapped, elderly, and underprivileged persons.
  - (10) Funds for crime prevention, fire protection and prevention, and public safety.
  - (11) Funds to relieve, improve, and advance the physical and mental conditions, care and medical treatment, and health and welfare of injured or disabled veterans.
- e. Uses that perpetuate the memory and history of the dead.
  - f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, including 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.

- I. 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 primary purpose provided that the gross revenue from the activity is disbursed to uses prescribed by this subsection.

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

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

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 428

### HOUSE BILL NO. 1394

(Representatives Grueneich, Dockter, D. Johnson, Nathe)  
(Senators Schaible, Sorvaag)

AN ACT to amend and reenact subsection 5 of section 53-06.1-11 of the North Dakota Century Code, relating to rent limits for electronic pull tab devices.

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

**SECTION 1. 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 only a jar bar, the monthly rent for pull tabs may not exceed an additional one hundred seventy-five dollars. If pull tabs is conducted involving only a dispensing device, ~~electronic pull tab device~~, or a jar bar and dispensing device ~~or electronic pull tab device~~, the monthly rent for pull tabs may not exceed an additional three hundred twenty-five dollars.
  - b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving either a jar bar or dispensing device, ~~or electronic pull tab device~~, or any combination, the monthly rent may not exceed four hundred dollars.
  - c. If pull tabs is conducted using one or more electronic pull tab devices, the monthly rent may not exceed an additional one hundred dollars per machine for the first five machines in the same venue. For each additional machine in the same venue beyond five, the monthly rent may not exceed an additional fifty dollars per machine up to a maximum of one thousand one hundred twenty-five dollars per month for all electronic pull tab devices in a single venue.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 429

### SENATE BILL NO. 2305

(Senator Poolman)

AN ACT to amend and reenact subsection 5 of section 53-12.1-01, subdivision a of subsection 2 of section 53-12.1-03, section 53-12.1-08, subsection 1 of section 53-12.1-11, subsections 1 and 7 of section 53-12.1-12, and section 53-12.1-13 of the North Dakota Century Code, relating to individuals eligible to play the North Dakota lottery and claim prizes and lottery online play; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 53-12.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Ticket" means an original and acceptable tangible evidence of play prescribed by the lottery and produced by a lottery terminal or a properly and validly registered ~~subscription~~ online play to prove participation in a draw of a game for a chance to win a prize.

**SECTION 2. AMENDMENT.** Subdivision a of subsection 2 of section 53-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. Employ those ~~persons~~ individuals deemed necessary to operate the lottery and provide secure facilities to house the lottery;

**SECTION 3. AMENDMENT.** Section 53-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**53-12.1-08. Purchase of ticket or payment of prize to certain ~~persons~~ individuals prohibited - Price of a ticket - Sale by retailer only - Second chance drawings - Prize paid to owner of a winning ticket - Prize subject to taxation - Discharge of liability - Penalty.**

1. A North Dakota lottery ticket may not be bought by or otherwise provided to, and a prize may not be paid to, the following individuals or to a parent, stepparent, child, stepchild, spouse, or sibling who is a regular member of the same household of the following individuals:
  - a. A member of the lottery advisory commission or employee of the lottery, unless authorized in writing by the director; or
  - b. An officer or employee of the lottery's gaming system vendor.

A ~~person~~

2. An individual who knowingly violates ~~this subsection~~ 1 is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.

- ~~2-3.~~ A retailer or employee of a retailer may buy a ticket and be paid a prize for a winning ticket.
- ~~3-4.~~ Only a retailer may sell a ticket. A retailer may sell a ticket only at the site stated on the license or at a temporary site for a special event authorized by the lottery. A retailer may not sell a ticket at a price greater than the price set by the lottery rules. A person convicted of violating this subsection is guilty of a class A misdemeanor on the first offense and a class C felony on a subsequent offense.
- ~~4-5.~~ A retailer may conduct a second chance drawing of entry forms or tickets to promote the sale of a ticket at that site provided that ~~a person~~ an individual is not required to purchase a ticket to participate.
- ~~5-6.~~ No ticket may be sold or given to a minor. A retailer, employee of a retailer, or any other person who knowingly violates this subsection is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.
- ~~6-7.~~ The prize to be paid or awarded for a winning ticket must be paid to the ~~person~~ individual who the director determines is the owner of the ticket. However, the prize of a deceased winning player must be paid to the lawful representative of the estate. ~~No~~ prize may not be paid on a winning ticket that has been purchased by use of a stolen lottery gift certificate or acquired illegally.
- ~~7-8.~~ If an individual steals a ticket or lottery gift certificate from a retailer, the individual is guilty of a class A misdemeanor. However, if the total value of the tickets or gift certificates stolen exceeds five hundred dollars, the offense is a class C felony.
- ~~8-9.~~ A prize awarded is subject to state and federal income tax laws and rules.
9. ~~A person~~
10. An individual who, with intent to defraud, falsely makes, alters, forges, passes, or counterfeits a ticket or gift certificate issued by the lottery, regardless of the amount gained, is guilty of a class C felony.
- ~~10-11.~~ The state, members of the lottery advisory commission, and employees of the lottery are discharged of all further liability upon payment of a prize.

**SECTION 4. AMENDMENT.** Subsection 1 of section 53-12.1-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The following information and records of the lottery are confidential:
  - a. Sales and income tax information, financial statements, and a credit report of a retailer applicant or person seeking or doing business with the lottery, and retailer application information other than the applicant's name and location;
  - b. Information related to a person owing a debt to the state or having a debt collected through a state agency that is made confidential by another state law or rule;



- c. Internal control and security procedures, security information on a winning ticket, and information on a bid or contractual data, the disclosure of which is harmful to the efforts of the lottery to contract for goods and services on favorable terms;
- d. Personal information on a player who purchases ~~a subscription~~ an online play or a player who wins a prize on a winning ticket unless the player authorizes, in writing, release of the information; and
- e. Lottery sales data, the disclosure of which is harmful to the competitive position of the lottery, retailer, or person seeking or doing business with the lottery. However, a retailer may authorize the lottery to release the retailer's lottery sales data.

**SECTION 5. AMENDMENT.** Subsections 1 and 7 of section 53-12.1-12 of the North Dakota Century Code are amended and reenacted as follows:

1. A claimant agency and the director shall cooperate on the setoff of a winning lottery ticket or promotional cash prize against a delinquent debt. A claimant agency is an agency of the state of North Dakota that ~~a person~~ an individual owes money to or that collects money on behalf of another party to satisfy a debt. The claimant agency and director shall share necessary information, including the ~~person's individual's~~ full name, social security number, and amount and type of debt, through a mutually convenient method to timely achieve a setoff of a prize.
7. If two or more claimant agencies make adverse claims to all or a part of a prize payment, upon receipt of written notice from the claimant agencies setting forth their claims, the director may deposit, in accordance with section 32-11-02, the contested amount of the prize payment with the clerk of court in the district in which an action pertaining to the contested amount is pending or with a court-authorized depository. If one of the claims is for child support, the director shall transfer the setoff amount to the state disbursement unit before depositing any remaining prize payment or award. Any review of this transfer to the state disbursement unit must be done pursuant to section 50-09-14. Upon making the deposit or transfer, the state and its officials and employees are discharged and relieved from further liability to any ~~person~~ individual or claimant agency related to the prize payment.

**SECTION 6. AMENDMENT.** Section 53-12.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**53-12.1-13. Rules.**

The attorney general shall adopt rules governing the operation of the lottery. The attorney general may adopt emergency rules as necessary without the grounds otherwise required under section 28-32-03. The attorney general shall adopt rules to address any matters necessary for the efficient operation of the lottery or convenience of the public, including:

1. Type of retailer where a ticket may be sold;
2. Qualification for selecting a retailer and amount of application and license fees;
3. Licensing procedure;

4. Method used to sell a ticket, including a gift certificate and subscriptiononline play;
5. Financial responsibility of a retailer;
6. Retailer promotions;
7. Amount and method of commission to be paid to a retailer, including a special bonus or incentive;
8. Deadline for claiming a prize by the owner of a winning ticket, however, the deadline may not exceed one year;
9. Manner of paying a prize to the owner of a winning ticket; and
10. Setoff of a prize.

Approved March 28, 2019

Filed March 29, 2019

# STATE GOVERNMENT

## CHAPTER 430

### HOUSE BILL NO. 1354

(Representatives D. Anderson, C. Johnson, Mitskog, Schreiber-Beck)  
(Senator Vedaa)

AN ACT to amend and reenact section 54-06-14.3 of the North Dakota Century Code, relating to leave for state employee volunteers.

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

**SECTION 1. AMENDMENT.** Section 54-06-14.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-06-14.3. Disaster services, emergency medical services, and firefighter volunteers - Leave.**

1. Upon issuance of an order or proclamation declaring a state of disaster or emergency pursuant to chapter 37-17.1, or a declaration of at least a level II disaster by the American red cross in this or any other state, the executive officer in charge of a state agency may grant a leave of absence to any full-time employee of that agency who is certified by the American red cross as a disaster services volunteer. The leave of absence must be for the purpose of allowing that employee, upon request by the American red cross, to participate in disaster relief services. ~~A person~~
2. The executive officer in charge of a state agency may grant a paid leave of absence to a full-time employee of that agency who is an emergency medical services personnel volunteer or volunteer firefighter. The leave of absence must be for the purpose of allowing that employee to respond to an emergency at the request of an emergency medical services operation or fire department.
3. An individual on leave under this section is not deemed to be an employee of the state for the purposes of workforce safety and insurance. The cumulative leave granted under this section may not exceed five working days during any calendar year. The leave may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 431

### HOUSE BILL NO. 1230

(Representatives Schreiber-Beck, D. Anderson, Hatlestad, Roers Jones, Zubke)  
(Senators Klein, Kreun, J. Roers)

AN ACT to amend and reenact section 54-06-37 of the North Dakota Century Code, relating to the lease of a manned aircraft in an emergency.

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

<sup>214</sup> **SECTION 1. AMENDMENT.** Section 54-06-37 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-06-37. Authorization to purchase or lease aircraft - Legislative assembly or budget section approval - Exception.**

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1. As used in this section, "airworthy" means an aircraft conforms to its type design and is in a condition for safe operation.
2. Except as otherwise provided in subsections 3 and 4, a state agency or other entity of state government may not purchase or lease ~~an~~ a manned aircraft without specific authorization from the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session.
3. In an emergency circumstance, a state agency, department, or institution may lease a manned aircraft without approval from the legislative assembly or the budget section if an aircraft currently leased or owned by the state agency, department, or institution is not airworthy. The emergency lease under this subsection may extend only until the aircraft deemed not airworthy is determined to be airworthy.
4. A state agency, department, or institution may purchase a replacement aircraft without approval from the legislative assembly or the budget section if an aircraft is destroyed beyond repair and only insurance proceeds are used for the purchase of the replacement aircraft. If the purchase price of a replacement aircraft exceeds the insurance proceeds, the state agency, department, or institution must receive authorization in accordance with subsection 2.
5. This section does not apply to aircraft purchased or leased by the office of the adjutant general or the university of North Dakota school of aviation.

Approved April 24, 2019

Filed April 24, 2019

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<sup>214</sup> Section 54-06-37 was also amended by section 12 of Senate Bill No. 2055, chapter 438.

## CHAPTER 432

### HOUSE BILL NO. 1077

(Energy and Natural Resources Committee)  
(At the request of the State Auditor)

AN ACT to create and enact a new subsection to section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

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

<sup>215</sup> **SECTION 1.** A new subsection to section 54-10-01 of the North Dakota Century Code is created and enacted as follows:

Perform work on mineral royalties for the federal government in accordance with section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].

Approved March 28, 2019

Filed March 29, 2019

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<sup>215</sup> Section 54-10-01 was also amended by section 3 of Senate Bill No. 2004, chapter 29.

## CHAPTER 433

### HOUSE BILL NO. 1541

(Representatives Buffalo, Fegley, Hager)  
(Senators Hogan, Myrdal)

AN ACT to amend and reenact section 54-12-33 of the North Dakota Century Code, relating to presentations by the human trafficking commission.

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

<sup>216</sup> **SECTION 1. AMENDMENT.** Section 54-12-33 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-12-33. Human trafficking commission.**

1. The attorney general may establish a human trafficking commission, comprised of designees from state, local, and tribal agencies which have contact with victims or perpetrators, nongovernmental organizations that represent or work with victims, and other organizations and individuals, including victims, whose expertise would benefit the commission. The attorney general may establish the commission by appointing an existing statewide coalition.
2. The commission shall:
  - a. Collect and evaluate data on human trafficking in this state and submit an annual report to the attorney general, governor, and legislative assembly;
  - b. Promote public awareness and provide information to education personnel and the general public about human trafficking, victim remedies and services, and trafficking prevention;
  - c. Promote training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators;
  - d. Promote training on human trafficking investigation and prosecution with the North Dakota state's attorney's association, the North Dakota peace officers standards and training board, and state and local law enforcement agencies; and
  - e. Present annually regarding human trafficking awareness and prevention at professional development conferences directed toward teachers, administrators, and support staff which are hosted by educational organizations in this state or by the department of public instruction; and
  - f. Conduct other appropriate activities.

Approved May 1, 2019

Filed May 2, 2019

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<sup>216</sup> Section 54-12-33 was also amended by section 1 of House Bill No. 1311, chapter 434.

## CHAPTER 434

### HOUSE BILL NO. 1311

(Representatives Buffalo, Beadle, Dobervich, Fegley, Hager, Jones, M. Nelson,  
Satrom)  
(Senators Clemens, Heckaman, Hogan, Kannianen)

AN ACT to amend and reenact subsection 2 of section 54-12-33 of the North Dakota Century Code, relating to law enforcement training on missing and murdered indigenous people.

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

<sup>217</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 54-12-33 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission shall:
  - a. Collect and evaluate data on human trafficking in this state and submit an annual report to the attorney general, governor, and legislative assembly;
  - b. Promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;
  - c. Promote training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators;
  - d. Promote training on human trafficking investigation and prosecution and on missing and murdered indigenous people with the North Dakota state's attorney's association, the North Dakota peace officers standards and training board, and state and local law enforcement agencies; and
  - e. Conduct other appropriate activities.

Approved March 28, 2019

Filed March 29, 2019

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<sup>217</sup> Section 54-12-33 was also amended by section 1 of House Bill No. 1541, chapter 433.

## CHAPTER 435

### HOUSE BILL NO. 1507

(Representatives Buffalo, Heinert, C. Johnson, Jones, Magrum, Satrom, Schneider)  
(Senators Hogan, Kannianen, Luick, Marcellais, Myrdal)

AN ACT to create and enact section 54-12-33.1 of the North Dakota Century Code, relating to human trafficking prevention training; and to provide a continuing appropriation.

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

**SECTION 1.** Section 54-12-33.1 of the North Dakota Century Code is created and enacted as follows:

#### **54-12-33.1. Human trafficking prevention training - Exemptions - Immunity - Continuing appropriation.**

1. As used in this section:
  - a. "Human trafficking" means human trafficking as defined in chapter 12.1-41.
  - b. "Human trafficking commission" means the commission established under section 54-12-33.
  - c. "Lodging establishment" means any hotel, motel, resort, building, or structure that is used to provide sleeping accommodations to transient guests.
  - d. "Proprietor" means the person in charge of a lodging establishment and includes an owner, lessee, and manager.
2. Within ninety days of the effective date of this Act, the human trafficking commission shall establish an educational training program with a focus on the accurate and prompt identification and reporting of, or response to, suspected human trafficking. To the extent possible, the human trafficking commission shall allow the use of existing training modules and materials. The training must include:
  - a. Human trafficking awareness;
  - b. How to recognize potential victims of human trafficking;
  - c. How to identify activities commonly associated with human trafficking; and
  - d. Effective responses to human trafficking situations, including how to report suspected human trafficking to law enforcement.
3. A proprietor may:
  - a. Provide each onsite employee with the training described in subsection 2.



- b. In an employee roster or in each employee's personnel file, annually certify each employee has received the training approved by the human trafficking commission.
    - c. Conduct an ongoing awareness campaign for employees which addresses the information described in subsection 2.
  4. A proprietor may post and maintain a poster approved and provided by the human trafficking commission which contains the information described in subsection 2. The poster must include the contact information for an organization that provides assistance and support services to human trafficking victims. The poster may be visibly displayed at the lodging establishment's check-in area, lobby, or transient guest services.
  5. A proprietor or employee of a lodging establishment who acts in good faith is immune from liability in any civil action for reporting suspected human trafficking activities.
  6. The human trafficking commission may seek, apply for, accept, and receive any donation, gift, grant, or bequest offered or tendered from public or private sources for the purpose of furthering the objectives of the human trafficking prevention training and incentivizing proprietors to participate in the human trafficking prevention training. All moneys received or accepted under this subsection are appropriated on a continuing basis to the human trafficking commission.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 436

### HOUSE BILL NO. 1313

(Representatives Buffalo, Beadle, Dobervich, Fegley, Hager, Jones, M. Nelson,  
Satrom)  
(Senators Clemens, Heckaman, Hogan, Kannianen)

AN ACT to amend and reenact section 54-12-34 of the North Dakota Century Code, relating to the collection of data on missing persons.

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

**SECTION 1. AMENDMENT.** Section 54-12-34 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-12-34. Criminal justice data information sharing system.**

1. The attorney general shall maintain a criminal justice data information sharing system within the bureau of criminal investigation for the exchange of criminal justice data information by judicial, law enforcement, and emergency services agencies, and the department of transportation. Only an authorized individual employed by a criminal justice agency as defined in section 12-60-16.1, the department of transportation, a state court, or the department of emergency services or any other individual approved by the attorney general may access the system. To be eligible for access to the criminal justice data information sharing system, an individual shall undergo a criminal history background check, including a fingerprint check.
2. The criminal justice data information sharing system may be accessed only in accordance with rules adopted under this section. Any law enforcement record in the possession of the attorney general through the criminal justice data information sharing system is an exempt record. Criminal justice data information about an offense committed by a child if the offense has not been transferred under section 27-20-34 to another court having jurisdiction of the offense and information about a child victim or witness is confidential.
3. The attorney general shall provide staff to maintain the criminal justice data information system and provide administrative support for the advisory board.
4. A criminal justice information advisory board must be appointed, consisting of:
  - a. The chief justice of the supreme court or the chief justice's designee.
  - b. The director of the department of emergency services or the director's designee.
  - c. The director of the department of corrections and rehabilitation or the director's designee.
  - d. The superintendent of the state highway patrol or the superintendent's designee.

- e. The chief of the bureau of criminal investigation, who is the chairman of the advisory board.
  - f. The chief information officer of the state or the chief information officer's designee.
  - g. The director of the department of transportation or the director's designee.
  - h. A representative of a city police department, appointed by the attorney general from a list of two or more nominees from the North Dakota chiefs of police association.
  - i. A representative of a county sheriff's office, appointed by the attorney general from a list of two or more nominees from the North Dakota sheriffs and deputies association.
  - j. A state's attorney, appointed by the attorney general from a list of two or more nominees from the North Dakota state's attorney's association.
  - k. A city government representative, appointed by the attorney general from a list of two or more nominees from the league of cities.
  - l. A county government representative, appointed by the attorney general from a list of two or more nominees from the association of counties.
5. Advisory board members who are not permanent full-time state employees are entitled to compensation of seventy-five dollars per day and mileage and expenses as provided by law for state employees. With the exception of the chief of the bureau of criminal investigation, advisory board members appointed under this section serve staggered three-year terms.
  6. The attorney general, after consultation with the advisory board, shall adopt rules to establish eligibility for access to the criminal justice data information sharing system; to implement the collection, storage, and sharing of criminal justice information and the systems necessary to perform those functions; and to address the operation of the advisory board.
  7. The attorney general shall implement a missing person repository for authorized users to enter missing person information in accordance with rules established by the bureau of criminal investigation. Missing person information, including demographic data related to indigenous people, which is entered by an authorized user or made available to an authorized user by a federally recognized tribe in this state must be included in the repository. Records under this subsection are exempt records that may be disclosed only in accordance with bureau of criminal investigation rules.

Approved April 8, 2019

Filed April 9, 2019

**CHAPTER 437****SENATE BILL NO. 2058**

(Senator Anderson)  
(Representative Longmuir)

AN ACT to amend and reenact subsection 6 of section 54-17.8-06 of the North Dakota Century Code, relating to the North Dakota outdoor heritage advisory board.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 54-17.8-06 of the North Dakota Century Code is amended and reenacted as follows:

6. The advisory board ~~shall recommend~~may not forward a grant application to the commission unless the approval of grants application is for funding activities that fulfill the purposes of this chapter and the application receives a favorable recommendation from a majority of the advisory board members.

Approved April 15, 2019

Filed April 15, 2019

## CHAPTER 438

### SENATE BILL NO. 2055

(Senator Wardner)  
(Representative Pollert)

AN ACT to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to the establishment of the budget section; to amend and reenact sections 15-03-04, 15-10-12.1, 20.1-02-05.1, 20.1-02-16.1, 25-04-02.2, 37-17.1-27, 40-23-22.1, 47-30.1-24.1, 48-01.2-25, subsection 16 of section 50-06-05.1, subsection 18 of section 50-06-05.1, and sections 54-06-37, 54-27-22, 54-27-23, 54-44.1-13.1, 54-59-05, and 65-08.1-02 of the North Dakota Century Code, relating to agency requests for budget section approval; and to repeal section 1 of chapter 67 of the 2013 Session Laws, relating to the authority of the state board of agricultural research and education to sell certain real property.

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

**SECTION 1. AMENDMENT.** Section 15-03-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-03-04. Legal investments.**

Subject to the provisions of section 15-03-05, the board of university and school lands shall apply the prudent investor rule in investing the permanent funds under its control. The "prudent investor rule" means that in making investments the board shall exercise the same judgment and care, under the circumstances then prevailing and limitations of North Dakota and federal law, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable investment returns. Notwithstanding any investments made before July 1, 1997, the board may not use any funds entrusted to it to purchase, as sole owner, commercial or residential real property in North Dakota without prior approval of the legislative assembly or the budget section ~~of the legislative management if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act.~~ The board may also lend securities held by the permanent funds, including the authority to pledge a security interest in the securities in the possession of a custodian agent. These securities must be collateralized as directed by the board.

<sup>218</sup> **SECTION 2. AMENDMENT.** Section 15-10-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-12.1. Acceptance of buildings and campus improvements - Legislative approval.**

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<sup>218</sup> Section 15-10-12.1 was also amended by section 8 of House Bill No. 1003, chapter 3.

The state board of higher education may authorize campus improvements and building maintenance on land under the control of the board which are financed by donations, gifts, grants, and bequests if the cost of the improvement or building maintenance is not more than seven hundred thousand dollars. The consent of the legislative assembly is required for construction of any building or any addition to a building on land under the control of the board which is financed by donations, gifts, grants, and bequests. The consent of the legislative assembly is required for campus improvements or building maintenance financed by donations, gifts, grants, and bequests if the cost of the improvements or maintenance is more than seven hundred 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 the three months following the close 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 management,~~ may authorize campus improvements and building maintenance financed by donations, gifts, grants, and bequests if the cost of the improvement or maintenance is more than seven hundred thousand dollars. The budget section approval must comply with section 15 of this Act and must include a specific dollar limit for each campus improvement project or maintenance project. The state board of higher education may authorize the sale of any real property or buildings which an institution of higher learning has received by gift or bequest. The board shall prescribe such conditions for the sale of the property as it determines necessary. The conditions must include requiring an appraisal and 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 or building maintenance 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.

**SECTION 3. AMENDMENT.** Section 20.1-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-05.1. Land acquisitions - Statewide land acquisition plan.**

1. The director shall establish a comprehensive statewide land acquisition plan ~~that must be approved, subject to approval by the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session.~~ Every land acquisition made by the department exceeding ten acres [4.05 hectares] or ten thousand dollars must be approved by the legislative assembly or the budget section if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act.
2. Before a land acquisition, the department shall have the land in question appraised by a certified appraiser. The department may not acquire any land for an amount that exceeds the appraised value except for parcels or tracts of land less than forty acres [16.19 hectares] which may be acquired for up to two hundred percent of the appraised value.
3. Before the appraisal, the director shall give notice of the intent to purchase to every landowner within one mile [1.16 kilometers] of the boundary of the land to be appraised unless the landowner is within the boundary of a city, then the director shall send notice to the governing body of the city or unless the

landowner is within the geographical boundary of a rural subdivision where the lots are ten acres [4.04 hectares] or less, then the director shall send notice to the governing body of the township or other governing authority for the rural subdivision. The director shall send notice to the board of county commissioners in the county of the land to be appraised, the board of township supervisors if the land to be appraised is in an organized township, and the governing body of a city within twelve miles [19.32 kilometers] of the boundary of the land to be appraised. The director shall publish notice in the official newspaper of the county of the land to be appraised, once a week for two consecutive weeks. The notice must contain the amount of acreage, the legal description, and the fact that the department intends to purchase the land.

**219 SECTION 4. AMENDMENT.** Section 20.1-02-16.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-16.1. Game and fish fund - Use - Required balance - Budget section approval.**

All income of the state game and fish department deposited by the director with the state treasurer must be credited to the state game and fish fund and the fund may be used only by the department. All money derived from the investment of the fund, special accounts, or portions of the fund must be credited to the game and fish department private land habitat and access improvement fund. The department shall spend moneys in the game and fish fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below fifteen million dollars, unless otherwise authorized by the legislative assembly or the budget section if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act.

**SECTION 5. AMENDMENT.** Section 25-04-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-02.2. Institutional sale of services - Budget section approval.**

Subject to approval of the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session, the life skills and transition center may provide any service not otherwise authorized by law under contract with a governmental or nongovernmental person. The life skills and transition center shall determine the rates for services provided. The legislative assembly or the budget section may approve the provision of a service under this section only after determining that the service is not otherwise being provided by either the private or public sector. Any request considered by the budget section must comply with section 15 of this Act.

**SECTION 6. AMENDMENT.** Section 37-17.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-27. State disaster relief fund - Creation - Uses.**

There is created in the state treasury a state disaster relief fund. Moneys in the fund are to be used subject to legislative appropriations ~~and emergency commission and budget section approval~~ for providing the required state share of funding for expenses and administration associated with ~~presidential-declared disasters in the~~

<sup>219</sup> Section 20.1-02-16.1 was also amended by section 4 of Senate Bill No. 2017, chapter 42, and section 2 of Senate Bill No. 2293, chapter 198.

statefederal emergency management agency disaster response, recovery, and mitigation grants and for the purposes of reimbursing costs under section 37-17.1-28. Any interest or other fund earnings must be deposited in the fund. Before any expenditure is made from the fund, the agency authorized to make the expenditure shall provide information on the purpose and payee of the expenditure to the appropriation committees of the house of representatives and senate or to the budget section if the legislative assembly is not in session.

**SECTION 7. AMENDMENT.** Section 40-23-22.1 of the North Dakota Century Code is amended and reenacted as follows:

**40-23-22.1. City flood control special assessment exemption for state property - Limitations.**

1. Notwithstanding any other provision of law, property of the state in a city subject to this section is exempt from special assessments levied for flood control purposes. Upon request by the governing body of the city, the exemption under this section may be completely or partially waived by majority vote of the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act. A city is subject to the exemption under this section in recognition of state financial assistance for flood control provided to the city pursuant to section 61-02.1-01 or other appropriation or commitment of state funds.
2. The exemption under this section does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education. An assessment allowed under this subsection must be based on the square footage or front footage of the land occupied by the structure, fixture, or improvement and made against the structure, fixture, or improvement and not against the land on which it is located.

**SECTION 8. AMENDMENT.** Section 47-30.1-24.1 of the North Dakota Century Code is amended and reenacted as follows:

**47-30.1-24.1. Claims by state agencies - Budget section approval and report.**

Within one year of receipt of state agency property, the administrator shall notify the agency by certified mail. The commissioner of university and school lands shall present a report to the budget section of the legislative management identifying every state agency that has not submitted a claim for property belonging to that agency within one year of the receipt of the date of the certified mail receipt. Upon approval of the budget section of the legislative management, the agency relinquishes its right to recover its property. Any request considered by the budget section must comply with section 15 of this Act.

**SECTION 9. AMENDMENT.** Section 48-01.2-25 of the North Dakota Century Code is amended and reenacted as follows:

**48-01.2-25. Authorization of expansion of public improvements by legislative assembly or budget section.**

Notwithstanding any other provision of law, a state agency or institution may not significantly change or expand a public improvement beyond what has been



approved by the legislative assembly unless the legislative assembly approves the change or expansion of the project or any additional expenditure for the project. During the time the legislative assembly is not in session, and unless otherwise restricted by previous legislative action or other law, the budget section of ~~the legislative management~~ may approve a change or expansion or any additional expenditure for the project. However, the budget section of ~~the legislative management~~ may not approve a change, expansion, or additional expenditure for the project during the six months preceding the convening of a regular session or during the three months following the close of a regular session except for changes in project scope and related additional expenditures resulting from an unforeseen emergency event. Any request considered by the budget section must comply with section 15 of this Act. For the purposes of this section, a significant change or expansion includes the construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

**220 SECTION 10. AMENDMENT.** Subsection 16 of section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

16. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise county administration of that program. ~~Provided, however, that the~~The department with the consent of the ~~legislative assembly or the budget section of the legislative management~~if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act. Any request considered by the budget section must comply with section 15 of this Act. The department may not deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

**221 SECTION 11. AMENDMENT.** Subsection 18 of section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

18. To act as the official agency of the state in the administration of the home energy assistance program; to direct and supervise county administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a

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<sup>220</sup> Section 50-06-05.1 was also amended by section 4 of House Bill No. 1102, chapter 404, section 11 of Senate Bill No. 2055, chapter 438, section 81 of Senate Bill No. 2124, chapter 391, and section 1 of Senate Bill No. 2313, chapter 394.

<sup>221</sup> Section 50-06-05.1 was also amended by section 4 of House Bill No. 1102, chapter 404, section 10 of Senate Bill No. 2055, chapter 438, section 81 of Senate Bill No. 2124, chapter 391, and section 1 of Senate Bill No. 2313, chapter 394.

vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits. Any request considered by the budget section must comply with section 15 of this Act.

<sup>222</sup> **SECTION 12. AMENDMENT.** Section 54-06-37 of the North Dakota Century Code is amended and reenacted as follows:

**54-06-37. Authorization to purchase or lease aircraft - Legislative assembly or budget section approval.**

A state agency or other entity of state government may not purchase or lease an aircraft without specific authorization from the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act. This section does not apply to aircraft purchased or leased by the office of the adjutant general or the university of North Dakota school of aviation.

**SECTION 13. 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 the director's recommendations regarding the proposed project and necessary planning moneys to the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. Funds may be advanced only in the event that if an authorization has first been received from the legislative assembly or the budget section. Any request considered by the budget section must comply with section 15 of this Act. 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.

**SECTION 14. AMENDMENT.** Section 54-27-23 of the North Dakota Century Code is amended and reenacted as follows:

**54-27-23. Cash flow financing.**

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<sup>222</sup> Section 54-06-37 was also amended by section 1 of House Bill No. 1230, chapter 431.

In order to effectively meet the cyclical cash flow needs of state government, the office of management and budget upon approval of the emergency commission is hereby authorized to issue certificates in anticipation of revenue, notes, or bonds, to special funds on deposit in the state treasury. Any issue of such certificates, notes, or bonds must be approved by the emergency commission and are to be used for cash flow financing only, and not to offset projected deficits in state finances unless first approved by the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. The budget section may approve additional cash flow financing not to exceed eighty percent of estimated general fund revenues relating to sales or production occurring prior to June thirtieth, to be collected in July and August after the end of the biennium. Such additional cash flow financing is only effective for sixty days unless an extension or reapproval is received from the legislative assembly or the budget section if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act. If a revenue shortfall of greater than five percent occurs, the office of management and budget shall order budget allotments under section 54-44.1-12 prior to approval by the legislative assembly or the budget section of such additional cash flow financing. It is the intent of the legislative assembly that all borrowing must be repaid by the end of the biennium. The terms of any specific issue of such certificates, notes, or bonds may not exceed one hundred eighty days from the date of issuance whereupon the principal and interest on the certificates, notes, or bonds must be paid in full from the state general fund or from another issue of a similar nature. All principal and interest on such issues made during a biennial period must be repaid in full at the close of the biennial period from the state general fund. When certificates, notes, or bonds are issued for cash flow purposes to funds which otherwise would be invested, with the investment income accruing to the special fund, the certificate must bear an investment rate of return which must be agreed upon by the state investment board, and must be at a level commensurate with the yield to be reasonably expected by such fund if invested in alternate securities.

**SECTION 15.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

**Budget section - Appointment - Powers and duties.**

1. To provide for flexibility in the management of state funds between regular sessions of the legislative assembly and to minimize the need for and the expense of a special session, the legislative management, during each biennium, shall appoint a budget section.
2. The membership of the budget section must include:
  - a. The majority leader and the assistant majority leader of the house of representatives;
  - b. The majority leader and the assistant majority leader of the senate;
  - c. The minority leader and the assistant minority leader of the house of representatives;
  - d. The minority leader and the assistant minority leader of the senate;
  - e. The speaker of the house of representatives; and

- f. Each member of the legislative assembly appointed to serve on the appropriations committees of the house of representatives and the senate.
3. The legislative management shall designate the chairman of the budget section. The budget section shall operate according to the statutes and procedures governing the operation of other legislative management interim committees. The budget section shall meet at least quarterly upon the call of the chairman.
4. The legislative assembly, by law, may provide the authority for the budget section to approve specific actions, projects, and transfers.
5. a. When evaluating state agency requests, the budget section shall consider criteria applicable to the request, including whether:
  - (1) The request is for a specific purpose;
  - (2) The request is for a specific amount of funds and for a specific time frame, not to continue beyond the end of the current biennium;
  - (3) The request conforms with legislative intent;
  - (4) The request is consistent with related statutory provisions;
  - (5) The request supports state priorities;
  - (6) The request improves state efficiencies and promotes effective state government;
  - (7) If the request is for a new program, the program does not extend beyond the current biennium; and
  - (8) The request addresses a state emergency.
- b. The budget section shall gather documentation that addresses each of the applicable criterion included in subdivision a from the agency requesting budget section approval.

**SECTION 16. AMENDMENT.** Section 54-44.1-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-13.1. Apportionment of reductions in spending authority caused by an initiative or referendum action.**

If as a result of any action taken pursuant to article III of the Constitution of North Dakota the moneys available in the state general fund or in any special fund in the state treasury are or will be reduced or eliminated, the director of the budget shall reduce the moneys available to all departments, agencies, and institutions for which moneys have been appropriated or are otherwise available from the affected fund for the current biennial period. The director of the budget shall reduce affected budgets by a percentage sufficient to cover the estimated losses caused by the initiative or referendum action, subject to the approval of the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act. Notwithstanding the provisions of section 54-44.1-13, the authority to make

reductions pursuant to this section applies equally to all entities of the executive, legislative, and judicial branches.

<sup>223</sup> **SECTION 17. AMENDMENT.** Section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-05. Powers and duties of department. (Effective through July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. With the exception of agreements entered related to the statewide interoperable radio network, an agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the legislative assembly or the budget section of the legislative management or if the legislative assembly is not in session before executing a financing agreement. Any request considered by the budget section must comply with section 15 of this Act. If the legislative assembly or the budget section or the legislative assembly does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. With the exception of financing for the statewide interoperable radio network, the department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The

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<sup>223</sup> Section 54-59-05 was also amended by section 2 of Senate Bill No. 2110, chapter 468.

department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.

6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency. The department shall present the information to the information technology committee on request of the committee.
8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and five hundred thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
12. Shall perform all other duties necessary to carry out this chapter.
13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003.
14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 13, may provide wide area network services for a period not to exceed four years to an occupant of a technology park

associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.

**Powers and duties of department. (Effective after July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the ~~legislative assembly or the budget section of the legislative management or if the legislative assembly is not in session~~ before executing a financing agreement. Any request considered by the budget section must comply with section 15 of this Act. If the ~~legislative assembly or the budget section of the legislative assembly~~ does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. The department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department

is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.

7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency. The department shall present the information to the information technology committee on request of the committee.
8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and five hundred thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
12. Shall perform all other duties necessary to carry out this chapter.
13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003.
14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 13, may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.

**SECTION 18. AMENDMENT.** Section 65-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**65-08.1-02. Workforce safety and insurance additional coverages.**

The organization may establish a casualty insurance organization, organized as a stock or mutual company, a risk pool, a reciprocal exchange, a risk retention or



purchasing group, or a reinsurer with the limited purpose of offering extraterritorial workforce safety and insurance coverage or other states insurance. The casualty insurance organization may be established only upon the director's determination that the organization is needed to provide sufficient workforce safety and insurance coverage for the employees and employers of this state and upon the approval of the legislative assembly or the budget section of the legislative management if the legislative assembly is not in session. Any request considered by the budget section must comply with section 15 of this Act. If a stock insurance company is established, the company shall meet the stock requirements of section 65-08.1-03.

**SECTION 19. REPEAL.** Section 1 of chapter 67 of the 2013 Session Laws is repealed.

Disapproved April 9, 2019

Filed April 16, 2019

NOTE: The Governor's veto of Senate Bill No. 2055 was not sustained. For the text of the Governor's veto message see chapter 531.

## CHAPTER 439

### HOUSE BILL NO. 1029

(Legislative Management)  
(Higher Education Committee)

AN ACT to provide for a legislative management higher education funding formula review committee; and to provide for a report.

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

#### SECTION 1. HIGHER EDUCATION FUNDING FORMULA REVIEW COMMITTEE - REPORT TO THE LEGISLATIVE MANAGEMENT.

1. During the 2019-20 interim, the higher education funding formula review committee is created and composed of eleven members as follows:
  - a. The Bismarck state college executive vice president, or a designee of the executive vice president;
  - b. The university of North Dakota vice president for finance and operations, or a designee of the vice president for finance and operations;
  - c. The North Dakota state university vice president for finance and administration, or a designee of the vice president for finance and administration;
  - d. The Minot state university vice president for administration and finance, or a designee of the vice president for administration and finance;
  - e. The commissioner of higher education, or a designee of the commissioner;
  - f. Two members of the house of representatives appointed by the majority leader of the house of representatives and one member appointed by the minority leader of the house of representatives;
  - g. Two members of the senate appointed by the majority leader of the senate and one member appointed by the minority leader of the senate.
2. The committee shall review the higher education funding formula, including only the appropriateness of certain credit-hour weighting factors and the potential or need for additional weighting factors. The legislative council shall provide staff services to the committee.
3. The committee shall report its findings and recommendations to the legislative management.

Approved March 27, 2019

Filed March 28, 2019

## **CHAPTER 440**

### **HOUSE BILL NO. 1220**

(Representative Keiser)  
(Senator Kreun)

AN ACT to provide for a legislative management study of secured party notification.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY.** During the 2019-20 interim, the legislative management in coordination with the secretary of state shall consider studying how the state's central indexing system can be used to provide notification to a secured lender when a super priority lien is filed on the collateral of a secured lender. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly. If the secretary of state determines there is a solution using the central indexing system, the secretary of state may proceed with implementing the change prior to the sixty-seventh legislative assembly convening.

Approved March 12, 2019

Filed March 13, 2019

## CHAPTER 441

### HOUSE BILL NO. 1265

(Representatives Blum, Beadle, Becker, Dockter, Headland, C. Johnson, Louser,  
Marschall)  
(Senators Kreun, Patten, J. Roers)

AN ACT to provide for a legislative management study of state parks.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATE PARKS - USE, MANAGEMENT, OVERHEAD.** During the 2019-20 interim, the legislative management shall consider studying the purpose, value, and benefits of each state park. The study must include a review of each state park's usage, annual attendance figures, overhead, and the cost to operate and maintain each state park. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 21, 2019

Filed March 22, 2019

**CHAPTER 442****HOUSE BILL NO. 1298**

(Representatives M. Nelson, P. Anderson, Hager, Holman, Mitskog, J. Nelson)

AN ACT to provide for a legislative management study concerning the accessibility of the state capitol.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ACCESSIBILITY OF THE STATE CAPITOL.** During the 2019-20 interim, the legislative management shall consider studying accessibility of the state capitol grounds as related to the Americans with Disabilities Act of 1990 [104 Stat. 327; 42 U.S.C. 12101 et seq.]. The study must include the effectiveness of the quantity and location of handicapped accessible parking spaces and the accessibility of entrances to the capitol in consideration of security concerns. The study also must include interior considerations including handicapped accessible restrooms with appropriate signage and seating areas on the ground floor of the capitol for individuals to rest. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 443

### HOUSE BILL NO. 1367

(Representatives Dobervich, D. Anderson, Damschen, Fegley, Vigesaa, Westlind)  
(Senators Bakke, Heckaman, Kannianen, Robinson)

AN ACT to provide for a legislative management study of railroad crossings.

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

##### **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - RAILROAD CROSSINGS.**

During the 2019-20 interim, the legislative management shall consider studying railroad crossings to determine whether adequate safety measures exist to prevent collisions between trains and motor vehicles. The study must include:

1. Consultation with the department of transportation, highway patrol, and associations and organizations representing counties, cities, townships, and the agricultural community;
2. The design and safety of railroad crossings and the feasibility of implementing design changes to increase safety and to reduce the likelihood of obstructions at the crossings, and consideration of the adequacy of traffic and pedestrian warning signals;
3. The availability of federal funding for railroad crossing improvement projects;
4. The feasibility of equipping trains with technology to increase safety; and
5. Data on railroad crossing accidents and incidents that have occurred within the state on an annual basis over the past five years.

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

Approved March 28, 2019

Filed March 29, 2019

## **CHAPTER 444**

### **HOUSE BILL NO. 1401**

(Representatives Mitskog, Beadle, Pyle, Schobinger)  
(Senator Bekkedahl)

AN ACT to provide for a legislative management study of the use of technology to enable remote attendance at interim legislative committee meetings.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - REMOTE ATTENDANCE AT INTERIM LEGISLATIVE COMMITTEE MEETINGS.** During the 2019-20 interim, the legislative management shall consider studying the use of technology to enable remote attendance at interim legislative committee meetings as a cost-saving measure. The study must include consideration of technologies including telephone conferences, interactive video networks, and other options for video interactions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 445

### HOUSE BILL NO. 1467

(Representatives D. Johnson, Brandenburg, Hatlestad, Howe)  
(Senators Klein, Luick, Wanzek)

AN ACT to provide for a legislative management study regarding agricultural issues in the state.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL ISSUES - GRAIN BUYERS, ROVING GRAIN BUYERS, GRAIN HANDLING FACILITIES, FERTILIZER, SOIL AMENDMENTS, SEED, AND FUEL.** During the 2019-20 interim, the legislative management shall consider studying agricultural issues in the state, including studying grain buyers, roving grain buyers, grain brokers, and grain handling facilities under title 60; and issues related to prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The study must include a review of the current law, industry practices, and background checks relating to grain buyers, roving grain buyers, grain brokers, and handling facilities and a review of any potential efficiencies that may exist, methods of maintaining financial security during the grain buying process including consideration of facility operating capital to ensure adequate solvency during licensing, and the process of confidential financial and physical audits. The study also must include a review of the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from facility insolvency if an end product is refined and no longer reflects the original product, the indemnity fund under title 60, and grain handling facility bonding requirements. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 23, 2019

Filed April 24, 2019



**CHAPTER 446****HOUSE BILL NO. 1474**

(Representatives Dockter, Headland, B. Koppelman, Nathe, Owens)  
(Senators D. Larson, Poolman)

AN ACT to provide for a legislative management study relating to replacing special assessment revenue with revenue from an alternative local funding source.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENT REVENUE REPLACEMENT.** During the 2019-20 interim, the legislative management shall consider studying options for replacing revenue generated by special assessments with revenue from an alternative local funding source. The study must include a review of the purposes for which special assessments are imposed, the revenue generated from the imposition of special assessments, local revenue sources that could be used as an alternative to imposing special assessments, and the manner in which fees for an alternative local revenue source would be calculated and imposed as compared to the manner in which special assessments are calculated and imposed. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 447

### HOUSE BILL NO. 1485

(Representatives Kasper, Becker, Bellew, Heinert, Lefor, Louser, D. Ruby)  
(Senators Bekkedahl, Burckhard, Kreun, J. Roers, Rust)

AN ACT to provide for a legislative management study of consumer personal data disclosures.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - CONSUMER PERSONAL DATA DISCLOSURES.** During the 2019-20 interim, the legislative management shall study protections, enforcement, and remedies regarding the disclosure of consumers' personal data. The study must include a review of privacy laws of other states and applicable federal law. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 448

### HOUSE BILL NO. 1487

(Representatives Kasper, Becker, Bellew, Headland, Lefor, Rohr, D. Ruby)  
(Senators Bekkedahl, Hogue, Kreun, Myrdal, J. Roers)

AN ACT to provide for a legislative management study of the homestead tax credit.

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

#### **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - HOMESTEAD TAX CREDIT.**

1. During the 2019-20 interim, the legislative management shall consider studying the homestead tax credit, a credit that reduces the property taxes of individuals who are sixty-five years of age or older or individuals who are permanently and totally disabled and whose income is \$42,000 or less per year.
2. The study must include consideration of whether:
  - a. The income levels and asset thresholds specified in the credit should be modified or indexed;
  - b. The credit impacts property valuations;
  - c. The qualifying age of sixty-five years of age or older is appropriate considering changing demographics; and
  - d. The current criteria for qualifying for the credit is effectively targeting those most in need.
3. The study also must include a review of the number of individuals who have claimed the credit in the past, an estimate of the number of individuals who might claim the credit in future years, and the estimated fiscal impact of making any changes to the credit.
4. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 28, 2019

Filed March 29, 2019

**CHAPTER 449****SENATE BILL NO. 2042**

(Legislative Management)  
(Taxation Committee)

AN ACT to provide for a legislative management study of developing a uniform county system of accounting.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - UNIFORM COUNTY SYSTEM OF ACCOUNTING.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of developing standard procedures and classification of accounts to provide a means of accumulating financial information that is uniform for all counties, regardless of the county's size or various approaches to budgeting and accounting which may be in use, with the objective of achieving uniformity of financial information to guide preparation of financial reports required by law. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 30, 2019

Filed May 2, 2019

## **CHAPTER 450**

### **SENATE BILL NO. 2130**

(Senators Cook, Bekkedahl, Schaible)  
(Representatives Dockter, Headland, Louser)

AN ACT to provide for a legislative management study relating to state agency fees.

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

##### **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATE AGENCY FEES.**

During the 2019-20 interim, the legislative management shall study, in coordination with the state auditor, the provisions of the North Dakota Century Code relating to state agency fees. The study must include a review of the dates state agency fee provisions were created and modified, the revenue generated by the fee as compared to the expenditures related to the purpose or purposes for which the fee is imposed, and the fund or funds in which fee revenue is deposited and from which fee revenue is expended; consideration of whether the amounts of fees should be changed and whether the imposition of a fee is appropriate or if other government revenues should be used to fund the provision of services. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 451

### SENATE BILL NO. 2148

(Senator Mathern)

AN ACT to provide for a legislative management study regarding article XIV of the Constitution of North Dakota and related issues.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ETHICS COMMISSION AND LEGISLATIVE ASSEMBLY RESPONSIBILITIES.** During the 2019-20 interim, the legislative management shall study the implementation and requirements of article XIV of the Constitution of North Dakota concerning the transparency of funding sources, lobbyists, conflicts of interest, and related matters, the responsibilities of the legislative assembly and the ethics commission, and potential issues under the Constitution of the United States and the Constitution of North Dakota. The members of the ethics commission must be invited to participate on the study committee as nonvoting members. The study must include a review of existing laws and laws enacted to implement article XIV and consideration of whether the civil and criminal sanctions for violations of the constitutional provisions and the statutes are appropriate; whether legislative action regarding article XIV is necessary or desirable; and an effective means to educate public officials, lobbyists, and the public on the requirements of article XIV and other laws regarding government ethics. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 30, 2019

Filed May 2, 2019

## CHAPTER 452

### SENATE BILL NO. 2176

(Senator Luick)

AN ACT to provide for a road train pilot program; to provide for a legislative management study of a road train pilot program; and to provide an expiration date.

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

**SECTION 1. DEPARTMENT OF TRANSPORTATION ROAD TRAIN PILOT PROGRAM - REPORTS TO LEGISLATIVE MANAGEMENT.** In collaboration with South Dakota and Minnesota transportation officials and agencies, and in consultation with a committee designated by the legislative management, the department of transportation shall establish a statewide road train pilot program. The department shall establish the parameters and policies regarding the use of road trains on state highways, including designation of routes, hours of operation, and length and weight restrictions. The department shall report to the legislative management as requested by the legislative management. The pilot program is contingent on the favorable recommendation of legislative management and completion of the study in section 2.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - ROAD TRAIN PILOT PROGRAM.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of creating a road train pilot program. The study must include consultation with the department of transportation, highway patrol, agriculture commissioner, industrial commission, department of commerce, the upper great plains transportation institute, and the governor. The study must include an assessment of the federal regulations impacting road train operations, the economic impact of permitting road train operations in the state, and the costs associated with implementing a road train pilot program. The legislative council may contract for consulting services to assist the legislative management in conducting the study. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 3. EXPIRATION DATE.** Section 1 of this Act is effective through July 31, 2023, and after that date is ineffective.

Approved April 11, 2019

Filed April 12, 2019

**CHAPTER 453****SENATE BILL NO. 2217**

(Senator Schaible)  
(Representative Owens)

AN ACT to provide for a legislative management study of a teacher incentive for leadership program.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - TEACHER INCENTIVE FOR LEADERSHIP PROGRAM.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of creating a teacher incentive for leadership program. The study must include an evaluation of whether a program would improve student learning through improved instruction; reward effective teachers by providing increased leadership opportunities; attract new teachers to the state by offering competitive starting salaries and professional development; promote collaboration and new career pathways for teachers through mentoring, coaching, and project-based learning; and retain effective teachers through new career opportunities and advancement. The study also must include a review of the types of data to be tracked to determine the success of the program; the correlation and effectiveness of the program in relation to other teacher development programs; and how the program operates in relation to the statewide education strategic vision. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 10, 2019

Filed April 11, 2019



## CHAPTER 454

### SENATE BILL NO. 2241

(Senators Klein, Luick, Robinson)  
(Representatives Magrum, J. Nelson, Trottier)

AN ACT to provide a legislative management study relating to regulating the installation, maintenance, testing, and repair of sewage treatment systems.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SEWAGE TREATMENT SYSTEM REGULATION.** During the 2019-20 interim, the legislative management shall consider studying the regulation of sewage treatment system installation, maintenance, testing, and repair. The study must include consideration of a uniform set of rules; uniform occupational licensing requirements; testing and education requirements for occupations that install, maintain, test, and repair sewage treatment systems; the regulatory agency best able to regulate sewage treatment systems; options for maintaining local government control over sewage treatment system regulation; and issues relevant to these considerations. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 455

### SENATE BILL NO. 2355

(Senators Bekkedahl, Kannianen, Oehlke)  
(Representatives Keiser, J. Nelson, Sanford)

AN ACT to provide for a legislative management study of the taxation of liquid nicotine and electronic smoking devices.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - TAXATION OF LIQUID NICOTINE AND ELECTRONIC SMOKING DEVICES.** During the 2019-20 interim, the legislative management shall consider studying the feasibility and desirability of applying an alternative or additional tax on liquid nicotine and electronic smoking devices. The study must include consideration of the current method of taxation applied to these products, the methods of taxation applied in other states, and the fiscal impact of applying an alternative or additional method of taxation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 456

### SENATE BILL NO. 2359

(Senators Kannianen, Burckhard, J. Roers)  
(Representatives Kempenich, Schmidt, Vigesaa)

A BILL to provide for a legislative management study of the scope of practice and regulation of electricians.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - REGULATION OF AND SCOPE OF PRACTICE OF ELECTRICIANS.** During the 2019-20 interim, the legislative management shall consider studying the regulation of and scope of practice of electricians. The study must include consideration of scope of practice and regulation as they relate to power limited systems and must include receipt of information from stakeholders, including trade groups. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 457

### HOUSE BILL NO. 1141

(Representatives Keiser, Howe, Longmuir, Zubke)  
(Senators Bekkedahl, Klein, Unruh)

AN ACT to amend and reenact section 54-44.3-20 of the North Dakota Century Code, relating to exceptions to classified service.

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

**SECTION 1. AMENDMENT.** Section 54-44.3-20 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-44.3-20. Categories of positions in the state service.**

All positions in the state service are included in the classified service, except:

1. Each official elected by popular vote and each person appointed to fill vacancies in an elective office, one principal assistant, and one private secretary.
2. Members of boards and commissions required by law.
3. Administrative heads of departments required by law, other than the superintendent of North Dakota vision services - school for the blind, the superintendent of the school for the deaf, and the state librarian.
4. Officers and employees of the legislative branch of government.
5. Members of the judicial branch of government of the state of North Dakota and their employees and jurors.
6. Persons temporarily employed in a professional or scientific capacity as consultants or to conduct a temporary and special inquiry, investigation, or examination for the legislative branch of government or a department of the state government.
7. Positions deemed to be inappropriate to the classified service due to the special nature of the position as determined by the division and approved by the board.
8. Employees of the institutions of higher education under the control of the state board of higher education.
9. Members and employees of occupational and professional boards.
10. Officers and employees of the North Dakota mill and elevator association.
11. Positions referred to under law as serving at the pleasure of or at the will of the appointing authority.

12. Licensed teachers engaged in teaching at the North Dakota youth correctional center, North Dakota vision services - school for the blind, and the school for the deaf.
13. Officers of workforce safety and insurance.
14. Officers and employees of the department of commerce.
15. Attorneys employed by the insurance commissioner.
16. Engineers, engineering technicians, and geologists employed by the director of mineral resources.
17. Officers and employees of the Bank of North Dakota.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 458

### SENATE BILL NO. 2078

(Political Subdivisions Committee)  
(At the request of the Information Technology Department)

AN ACT to amend and reenact sections 54-44.6-08 and 54-46-12 of the North Dakota Century Code, relating to records management and forms management.

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

**SECTION 1. AMENDMENT.** Section 54-44.6-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.6-08. Rules.**

The manager may adopt any rules in accordance with chapter 28-32 necessary to effectuate the purposes of this chapter.

**SECTION 2. AMENDMENT.** Section 54-46-12 of the North Dakota Century Code is amended and reenacted as follows:

**54-46-12. County, city, and park district records - Uniform system program established by administrator.**

The administrator shall ~~adopt rules in accordance with chapter 28-32 consistent with specific requirements of state law to~~establish a uniform system program of cataloging, reproduction, retention, and final disposition standards, procedures, and techniques for the effective management of county, city, and park district records. ~~Upon adoption of the rules all~~All county, city, and park district offices, departments, and agencies may establish, utilize, and maintain the uniform system program prescribed by the administrator.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 459

### SENATE BILL NO. 2046

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

AN ACT to amend and reenact sections 54-52-02.9, 54-52-06, and 54-52.1-03.2, subsection 1 of section 54-52.1-03.3, and section 54-52.6-09 of the North Dakota Century Code, relating to employer contributions to the public employees defined benefit plan, defined contribution plan, and retiree health plan and participation in the retiree health plan.

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

**SECTION 1. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-52-02.9. Participation by temporary employees.**

~~A temporary employee may elect, within~~

1. Within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system and receive credit for service after enrollment. ~~The~~Monthly, the temporary employee shall pay ~~monthly~~ to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. ~~The~~
2. If the temporary employee shall also first enrolled:
  - a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
  - b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen-hundredths percent times the temporary employee's present monthly salary.
3. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

**SECTION 2. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06. Employer's contribution to retirement plan - Report to the legislative assembly.**

1. Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012~~;~~ and with an additional increase of one percent, beginning with the reporting period of January 2013~~;~~ and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. For a participating member who first enrolls after December 31, 2019, the governmental unit shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.
2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from ~~its~~the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date ~~they~~the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.
3. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05.
4. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

**SECTION 3. AMENDMENT.** Section 54-52.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-03.2. Retiree health benefits fund - Appropriation.**

1. a. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding and providing hospital



benefits coverage and, medical benefits coverage, and prescription drug coverage under any health insurance program and dental, vision, and long-term care benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter.

- b. The state shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and one and fourteen-hundredths percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52.
- c. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 or the retirement plan under chapter 54-52.6 shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen-hundredths percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52 or chapter 54-52.6, except for nonteaching:
  - (1) Members first enrolled after December 31, 2019, for which a governmental unit contributes to the public employees retirement system fund under section 54-52-06 or the retirement plan under chapter 54-52.6; and
  - (2) Nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13 and employees of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 54-52-02.14.
- d. For nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13, the superintendent of public instruction shall contribute monthly to the retiree health benefits fund an amount equal to three and twenty-four hundredths percent of the monthly salaries or wages of those nonteaching employee members, beginning on the first of the month following the transfer under section 54-52-02.13 and continuing thereafter for a period of eight years, after which time the superintendent of public instruction shall contribute one and fourteen-hundredths percent of the monthly salary or wages of those nonteaching employee members.
- e. For employees of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 54-52-02.14, the state board for career and technical education shall contribute monthly to the retiree health benefits fund an amount equal to two and ninety-nine hundredths percent of the monthly salary or wages of those employee members, beginning on the first of the month following the transfer under section 54-52-02.14 and continuing thereafter for a period of eight years, after which time the state board for career and technical education shall contribute one and fourteen-hundredths percent of the monthly salary or wages of those employee members.

- f. The employer of a national guard security officer or firefighter shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen-hundredths percent of the monthly salaries or wages of all national guard security officers or firefighters participating in the public employees retirement system under chapter 54-52.
  - g. Job service North Dakota shall reimburse monthly the retiree health benefits fund for credit received under section 54-52.1-03.3 by members of the retirement program established by job service North Dakota under section 52-11-01.
  - h. The board, as trustee of the fund and in exclusive control of its administration, shall:
    - a. (1) Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended.
    - b. (2) Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.
2. All moneys deposited in the fund established under subsection 1, not otherwise appropriated, are hereby appropriated to the board for the purpose of making investments for the fund and to make contributions toward hospital and medical benefits coverage and prescription drug coverage under any health insurance program and dental, vision, and long-term care benefits coverage under the uniform group insurance program for eligible retired employees or surviving spouses of eligible retired employees and their dependents as elected.
  3. If a member terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason ~~prior to~~before retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. If a member's account balance is withdrawn, the member relinquishes all rights to benefits under the retiree health benefits fund.

<sup>224</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The following individuals are entitled to receive credit for hospital and medical benefits coverage and prescription drug coverage under any health insurance program and dental, vision, and long-term care benefits coverage under the uniform group insurance program under subsection 2:
  - a. A member or surviving spouse ~~of receiving retirement benefits under the highway patrolmen's retirement system~~ is eligible for the credit beginning on the date retirement benefits are effective.
  - b. ~~If the member first enrolled before January 1, 2020, a member or surviving spouse of receiving retirement benefits under the public~~

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<sup>224</sup> Section 54-52.1-03.3 was also amended by section 2 of Senate Bill No. 2045, chapter 463.

- employees retirement system is eligible for the credit beginning on the date retirement benefits are effective.
- c. A member or surviving spouse ~~of receiving retirement benefits under the~~ retirement program established by job service North Dakota under section 52-11-01 receiving retirement benefits is eligible for the credit beginning on the date retirement benefits are effective.
  - d. A retired judge or surviving spouse receiving retirement benefits under the retirement program established under chapter 27-17 is eligible for the credit beginning on the date retirement benefits are effective.
  - e. ~~All the former participating member first enrolled before January 1, 2020, a~~ former participating member of the defined contribution retirement plan receiving retirement benefits, or the surviving spouse of a former participating member of that retirement plan who was eligible to receive or was receiving benefits, under section 54-52.6-13, is eligible as determined by the board pursuant to ~~its~~the board's rules.

**SECTION 5. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-09. Contributions - Penalty.**

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and this assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, ~~and;~~ with an additional increase of one percent, beginning with the reporting period of January 2013;~~;~~ and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.
2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, ~~and;~~ with an additional increase of one percent, beginning with the monthly reporting period of January 2013;~~;~~ and with an additional increase of one percent, beginning with the monthly reporting period of January 2014. For members first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within

ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 460

### SENATE BILL NO. 2049

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

AN ACT to amend and reenact subsection 2 of section 39-03.1-11 and subsection 2 of section 54-52-17 of the North Dakota Century Code, relating to the computation of final average salary for employees who terminate employment after December 31, 2019.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 39-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Retirement benefits are based on the contributor's final average salary. Final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred twenty months of employment. For contributors who terminate employment on or after August 1, 2010, final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred eighty months of employment. For contributors who terminate employment between July 31, 2005, and August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the period for which the board has appropriate and accurate salary records on its electronic database, but that period may not be more than the last one hundred eighty months of employment. For members who terminate employment after December 31, 2019, final average salary is the higher of the final average salary calculated on December 31, 2019, or the average salary earned in the three highest periods of twelve consecutive months employed during the last one hundred eighty months of employment. ~~Months not employed or months in which employment was not as a permanent employee without earnings are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the contributor has worked for less than thirty-six months at the postponed retirement date, the final average salary is the average salary for all months of employment.~~

<sup>225</sup> **SECTION 2. AMENDMENT.** Subsection 2 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. For members who terminate employment on or after August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred eighty months of employment. For members who terminate employment between July 31, 2005, and August 1, 2010, final average salary

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<sup>225</sup> Section 54-52-17 was also amended by section 1 of Senate Bill No. 2047, chapter 461.

is the average of the highest salary received by the member for any thirty-six months employed during the period for which the board has appropriate and accurate salary records on ~~its~~the board's electronic database, but that period may not be more than the last one hundred eighty months of employment. For members who terminate employment after December 31, 2019, final average salary is the higher of the final average salary calculated on December 31, 2019, or the average salary earned in the three highest periods of twelve consecutive months employed during the last one hundred eighty months of employment. ~~Months not employed without earnings are excluded in arriving at the thirty-six months to be used for the purpose of computing an average.~~ If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 461

### SENATE BILL NO. 2047

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

AN ACT to amend and reenact subdivision a of subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to the computation of retirement benefits.

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

<sup>226</sup> **SECTION 1. AMENDMENT.** Subdivision a of subsection 4 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

- a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

(1) ServiceFor members first enrolled:

- (a) Before January 1, 2020, service benefit equals two percent of final average salary multiplied by the number of years of service employment.
- (b) After December 31, 2019, service benefit equals one and seventy-five hundredths percent of final average salary multiplied by the number of years of service employment.

- (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.

Approved April 11, 2019

Filed April 12, 2019

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<sup>226</sup> Section 54-52-17 was also amended by section 2 of Senate Bill No. 2049, chapter 460.

## CHAPTER 462

### HOUSE BILL NO. 1028

(Legislative Management)  
(Health Care Reform Review Committee)

AN ACT to create and enact chapter 26.1-36.6 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to public employees retirement system self-insurance plans for health benefits coverage; to amend and reenact sections 26.1-07.1-01, 54-52.1-01, 54-52.1-04, 54-52.1-04.2, 54-52.1-04.3, 54-52.1-05, and 54-52.1-11 of the North Dakota Century Code, relating to public employee uniform group health benefits coverage; to repeal sections 54-52.1-04.4, 54-52.1-04.5, 54-52.1-04.6, 54-52.1-04.10, 54-52.1-04.11, 54-52.1-04.12, 54-52.1-04.13, and 54-52.1-04.14 of the North Dakota Century Code, relating to public employees retirement system self-insurance plans for health benefits coverage mandated health benefits; and to declare an emergency.

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

**SECTION 1.** Chapter 26.1-36.6 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-36.6-01. Definitions.**

As used in this chapter, "self-insurance health plan" has the same meaning as provided under section 54-52.1-01.

##### **26.1-36.6-02. Self-insurance health plans - Regulation.**

The commissioner shall regulate the financial condition, integrity, and equitable administration of a self-insurance health plan established under chapter 54-52.1. All powers granted to the commissioner to regulate insurance companies and insurers under title 26.1 apply to the commissioner to regulate a self-insurance health plan.

##### **26.1-36.6-03. Self-insurance health plans - Requirements.**

1. The following policy provisions apply to a self-insurance health plan or to the administrative services only or third-party administrator, and are subject to the jurisdiction of the commissioner: 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10, 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17, 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46.
2. The following health benefit provisions applicable to a group accident and health insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are subject to the jurisdiction of the commissioner: 26.1-36-06, 26.1-36-06.1, 26.1-36-07, 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2, 26.1-36-09.3, 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9, 26.1-36-09.10, 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14, 26.1-36-09.15, 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22, 26.1-36-23.1, and 26.1-36-43.



**26.1-36.6-04. Rules.**

The commissioner shall adopt rules to administer this chapter. The rules must establish reserve requirements. The rules may provide certain self-insurance health plans are exempt from all or portions of this chapter.

**SECTION 2. AMENDMENT.** Section 26.1-07.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-07.1-01. Jurisdiction over providers of health care benefits.**

Notwithstanding any other provision of law, and except as provided ~~herein~~under this section, any person ~~or other entity~~, other than an insurance company duly licensed in this or another state which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, ~~must be~~ presumed to be subject to the jurisdiction of the commissioner unless the person ~~or other entity~~ shows that while providing such services ~~the person~~ is subject to the jurisdiction of another agency of this state, any subdivisions thereof, or the federal government. A self-insurance health plan formed under chapter 54-52.1 is not subject to this section but is subject to the jurisdiction of the commissioner under chapter 26.1-36.6.

**SECTION 3. AMENDMENT.** Section 54-52.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Board" means the public employees retirement board.
2. "Carrier" means:
  - a. For the hospital benefits coverage, an insurance company authorized to do business in the state, or a nonprofit hospital service association, or a prepaid group practice hospital care plan authorized to do business in the state, or the state if a self-insurance health plan is used for providing hospital benefits coverage.
  - b. For the medical benefits coverage, an insurance company authorized to do business in the state, or a nonprofit medical service association, or a prepaid group practice medical care plan authorized to do business in the state, or the state if a self-insurance health plan is used for providing medical benefits coverage.
  - c. For the life insurance benefits coverage, an insurance company authorized to do business in the state.
3. "Department, board, or agency" means the departments, boards, agencies, or associations of this state, ~~and~~. The term includes the state's charitable, penal, and higher educational institutions; the Bank of North Dakota; the state mill and elevator association; and counties, cities, district health units, and school districts.
4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible

employee" includes members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by ~~subsection 2 of~~ section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota workforce safety and insurance fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least seventeen and one-half hours per week and at least five months each year or for those first employed after August 1, 2003, is employed at least twenty hours per week and at least twenty weeks each year of employment. For purposes of sections 54-52.1-04.1, 54-52.1-04.7, 54-52.1-04.8, and 54-52.1-11, "eligible employee" includes retired and terminated employees who remain eligible to participate in the uniform group insurance program pursuant to applicable state or federal law.

5. "Health insurance benefits coverage" means hospital benefits coverage or medical benefits coverage, or both.
6. "Health maintenance organization" means an organization certified to establish and operate a health maintenance organization in compliance with chapter 26.1-18.1.
- ~~6-7.~~ "Hospital benefits coverage" means a plan ~~which that~~ either provides coverage for, or pays, or reimburses expenses for hospital services incurred in accordance with the uniform contract.
- ~~7-8.~~ "Life insurance benefits coverage" means a plan ~~which that~~ provides both term life insurance and accidental death and dismemberment insurance in amounts determined by the board, with a minimum of one thousand dollars provided for the term life insurance portion of the coverage.
- ~~8-9.~~ "Medical benefits coverage" means a plan ~~which that~~ either provides coverage for, or pays, or reimburses expenses for medical services in accordance with the uniform contract.
- ~~9-10.~~ "Member contribution" means the payment by the member into the retiree health benefits fund pursuant to sections 54-52-02.9 and 54-52-17.4.
- ~~10-11.~~ "Member's account balance" means the member's contributions plus interest at the rate set by the board.
12. "Self-insurance health plan" means a plan of self-insurance providing health insurance benefits coverage under section 54-52.1-04.2.
- ~~11-13.~~ "Temporary employee" means a governmental unit employee who is not filling an approved and regularly funded position in an eligible governmental unit and whose services may or may not be limited in duration.

**SECTION 4. AMENDMENT.** Section 54-52.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04. Board to contract for insurance.**

1. The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, life insurance benefits coverage for a specified

term, and employee assistance program services; may receive bids separately for all or part of the prescription drug benefits coverage component of medical benefits coverage; and shall accept one or more bids of and contract with the carriers ~~that in the judgment of the board~~ determines best ~~servesserve~~ the interests of the state and ~~its~~ the state's eligible employees. Solicitations must be made not later than ninety days before the expiration of an existing uniform group insurance contract. Bids must be solicited by advertisement in a manner selected by the board ~~that~~ which will provide reasonable notice to prospective bidders. In preparing bid proposals and evaluating bids, the board may utilize the services of consultants on a contract basis in order that the bids received may be uniformly compared and properly evaluated. In determining which bid, if any, will best serve the interests of eligible employees and the state, the board shall give adequate consideration to the following factors:

1. a. The economy to be effected.
  2. b. The ease of administration.
  3. c. The adequacy of the coverages.
  4. d. The financial position of the carrier, with special emphasis ~~as to its~~ on the solvency of the carrier.
  5. e. The reputation of the carrier and any other information ~~that is~~ available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.
2. The board may reject any or all bids and, in the event it does so, received under this section. If the board rejects all bids received, the board shall again solicit bids as provided in this section. The
  3. Under sections 54-52.1-04.1 and 54-52.1-04.2 the board may contract for health benefits coverage through a health maintenance organization or establish a plan of self-insurance for providing health insurance benefits coverage only under an administrative services only (ASO) contract or a third-party administrator (TPA) contract health plan.

<sup>227</sup> **SECTION 5. AMENDMENT.** Section 54-52.1-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.2. Self-insurance health plan for hospital and medical benefits coverage.**

1. ~~The board may establish~~ This section applies to a self-insurance health plan for providing:
  - a. Health insurance and prescription drug benefits coverage;
  - b. Health insurance benefits coverage, excluding all or part of prescription drug benefits coverage; or
  - c. All or part of prescription drug benefits coverage.

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<sup>227</sup> Section 54-52.1-04.2 was also amended by section 3 of Senate Bill No. 2045, chapter 463.

2. ~~Any~~ self-insurance health plan established by the board under this section must be provided under an administrative services only (ASO) contract or a third-party administrator (TPA) contract under the uniform group insurance program, ~~and. The board may be established only if it is determined by not establish a self-insurance health plan unless~~ the board that an administrative services only or third-party administrator plan is less costly than the lowest bid submitted by a carrier for underwriting the plan with equivalent contract benefits. Upon establishing a self-insurance plan, the board shall solicit bids for an administrative services only or third-party administrator contract only every other biennium, and the board is authorized to renegotiate an existing administrative services only or third-party administrator contract during the interim ~~determines~~ the self-insurance health plan best serves the interests of the state and the state's eligible employees. ~~In addition, if the board determines it is in the best interest of the plan,~~ individual stop-loss coverage insured by a carrier authorized to do business in this state ~~must~~ may be made part of any self-insured ~~a self-insurance health~~ plan. All bids under this section are due no later than January first, and must be awarded no later than March first, preceding the end of each biennium. All bids under this section must be opened at a public meeting of the board.

**SECTION 6. AMENDMENT.** Section 54-52.1-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.3. Contingency reserve Self-insurance health plan - Reserve fund - Continuing appropriation - Benefits - Insurance commissioner.**

1. ~~The~~ Pursuant to chapter 26.1-36.6, the board shall establish and maintain under a self-insurance health plan a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the uniform group insurance program. ~~The board shall determine the amount necessary to provide a balance in the contingency reserve fund between one and one-half months and three months of claims paid based on the average monthly claims paid during the twelve-month period immediately preceding March first of each year. The board also shall determine the amount necessary to provide an additional balance in the contingency reserve fund between one month and one and one-half months for claims incurred but not yet reported. The board may arrange for the services of an actuarial consultant to assist the board in making these determinations. Upon the initial changeover from a contract for insurance pursuant to section 54-52.1-04 or a health maintenance organization pursuant to section 54-52.1-04.1 to a self-insurance health plan pursuant to section 54-52.1-04.2, the board must have a plan in place which is reasonably calculated to meet within sixty months of the changeover the funding requirements of this chapter within sixty months~~ 26.1-36.6. All moneys in the contingency reserve fund, not otherwise appropriated, are appropriated to the board for the payment of claims and other costs of the uniform group insurance program during periods of adverse claims or cost fluctuations.
2. A self-insurance health plan must comply with section 26.1-36.6-03 and must provide the same benefits required of a fully insured plan.
3. The insurance commissioner shall ensure compliance with and enforce the provisions of this section pursuant to chapter 26.1-36.6.

**SECTION 7.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Self-insurance health plan - Bank of North Dakota line of credit - Continuing appropriation.**

The Bank of North Dakota shall extend to the board a line of credit not to exceed fifty million dollars. The board shall repay the line of credit from health insurance premium revenue or repay the line of credit from other funds appropriated by the legislative assembly. The board may access the line of credit to the extent necessary to provide adequate claims payment funds, to purchase stop-loss coverage, and to defray other expenditures of administration of the self-insurance health plan. All loan funds received by the board from the Bank under this section, not otherwise appropriated, are appropriated to the board for the repayment of claims and other costs of the uniform group insurance program.

**SECTION 8. AMENDMENT.** Section 54-52.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-05. Provisions of contract - Term of contract.**

1. Each uniform group insurance contract entered by the board must be consistent with the provisions of this chapter, must be signed for the state of North Dakota by the chairman of the board, and must include the following:
  - a. As many optional coverages as deemed feasible and advantageous by the board.
  - b. A detailed statement of benefits offered, including maximum limitations and exclusions, and such other provisions as the board may deem necessary or desirable.
2. The initial term or the renewal term of a fully insured uniform group insurance contract through a contract for insurance, health maintenance organization, or self-insurance health plan for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage may not exceed two years.
  - a. The board may renew a contract subject to this subsection without soliciting a bid under section 54-52.1-04 if the board determines the carrier's performance under the existing contract meets the board's expectations and the proposed premium renewal amount does not exceed the board's expectations, and renewal best serves the interests of the state and the state's eligible employees.
  - b. In making a determination under this subsection, the board shall:
    - (1) Use the services of a consultant to concurrently and independently prepare a renewal estimate the board shall consider in determining the reasonableness of the proposed premium renewal amount.
    - (2) Review the carrier's performance measures, including payment accuracy, claim processing time, member service center metrics, wellness or other special program participation levels, and any other measures the board determines relevant to making the determination and shall consider these measures in determining the board's satisfaction with the carrier's performance.
    - (3) Consider any additional information the board determines relevant to making the determination.

- c. ~~If the~~The board determines~~may determine~~ the carrier's performance under the existing contract does not meet the board's expectations or, the proposed premium renewal amount exceeds the board's expectations, or renewal does not best serve the interests of the state or the state's eligible employees and the board ~~determines~~therefore may decide to solicit a bid under section 54-52.1-04, ~~the board shall specify its reasons for the determination to solicit a bid.~~

**SECTION 9. 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~~In addition to the confidentiality requirements in section 26.1-36-12.4, ~~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~~which the eligible employee has given written authorization to have the information disclosed.
2. A person legally representing the eligible employee, upon proper proof of representation, and unless the eligible employee specifically withholds authorization.
3. A person authorized by a court order.
4. A person ~~or entity~~ to which the board is required to disclose information pursuant to federal or state statutes or regulations.
5. Any person ~~or entity~~ if the purpose of the disclosure is for treatment, payment, or health care operations.

**SECTION 10. REPEAL.** Sections 54-52.1-04.4, 54-52.1-04.5, 54-52.1-04.6, 54-52.1-04.10, 54-52.1-04.11, 54-52.1-04.12, 54-52.1-04.13, and 54-52.1-04.14 of the North Dakota Century Code are repealed.

**SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 463

### SENATE BILL NO. 2045

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

AN ACT to create and enact a new section to chapter 54-52.2 of the North Dakota Century Code, relating to contributions to the deferred compensation plan; and to amend and reenact subsection 7 of section 39-03.1-08.2 and sections 54-52.1-03.3 and 54-52.1-04.2 of the North Dakota Century Code, relating to the highway patrolmen's retirement system, the retiree health credit, and prescription coverage under a self-insured plan.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 39-03.1-08.2 of the North Dakota Century Code is amended and reenacted as follows:

7. In addition to service credit identified in this section, a vested contributor may purchase up to five years of service credit.

<sup>228</sup> **SECTION 2. AMENDMENT.** Section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-52.1-03.3. Eligibility for retiree health benefits - Fixed contribution and reduction factors.**

1. The following individuals are entitled to receive credit for hospital ~~and benefits coverage~~, medical benefits coverage, and prescription drug coverage under any health insurance program and for any dental, vision, and long-term care benefits coverage under the uniform group<sup>any</sup> insurance program under subsection 2:
  - a. A member or surviving spouse ~~of receiving retirement benefits under the highway patrolmen's retirement system~~ is eligible for the credit beginning on the date retirement benefits are effective.
  - b. A member or surviving spouse ~~of receiving retirement benefits under the public employees retirement system~~ is eligible for the credit beginning on the date retirement benefits are effective.
  - c. A member or surviving spouse ~~of receiving retirement benefits under the retirement program established by job service North Dakota under section 52-11-01 receiving retirement benefits~~ is eligible for the credit beginning on the date retirement benefits are effective.
  - d. A retired judge or surviving spouse receiving retirement benefits under the retirement program established under chapter 27-17 is eligible for the credit beginning on the date retirement benefits are effective.

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<sup>228</sup> Section 54-52.1-03.3 was also amended by section 4 of Senate Bill No. 2046, chapter 459.

- e. A former participating member of the defined contribution retirement plan receiving retirement benefits, or the surviving spouse of a former participating member of that retirement plan who was eligible to receive or was receiving benefits, under section 54-52.6-13, is eligible as determined by the board pursuant to its rules.
2. The board shall calculate the allowable monthly credit toward hospital ~~and benefits coverage~~, medical benefits coverage, and prescription drug coverage under any health insurance program and toward dental, vision, and long-term care benefits coverage under the ~~uniform group~~ any insurance program ~~for a person eligible~~ under subsection 1 in an amount equal to five dollars 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 before~~ attaining the age of sixty-five and an additional reduction factor of six percent ~~shall apply~~ applies for each year the member terminates employment ~~prior to before~~ 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 before~~ attaining the age of fifty-five and an additional reduction factor of six percent ~~shall apply~~ applies for each year the member terminates employment ~~prior to before~~ 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 before~~ attaining the age of sixty-five and an additional reduction factor of six percent applies for each year the member terminates employment ~~prior to before~~ attaining the age of sixty-four.
  3. The board shall apply the credit allowable under subsection 2 as elected by the eligible participant to the payment of monthly premiums required of each ~~person~~ individual eligible under subsection 1 for hospital benefits coverage ~~and~~, medical benefits coverage, and prescription drug coverage under any health insurance program and for dental, vision, and long-term care benefits coverage under the ~~uniform group~~ any insurance program. The board shall allow spouses who each have credit under subsection 2 to combine ~~their~~ the spouses' credits and shall apply the combined credit to the required monthly premiums as elected pursuant to this subsection. However, if the allowable credit under any circumstance exceeds the monthly premium in effect for selected coverage, that amount of the credit which exceeds the premium is forfeited and may not be used for any other purpose.
  4. ~~The board may, as~~ As an alternative to the calculation of the allowable monthly credit under subsection 2, the board may provide actuarially reduced benefit



options for the member and the member's surviving spouse, including a one hundred percent joint and survivor option or a fifty percent joint and survivor option.

<sup>229</sup> **SECTION 3. AMENDMENT.** Section 54-52.1-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.2. Self-insurance plan for hospital and medical benefits coverage.**

1. The board may establish a self-insurance plan for providing:
  - a. Health insurance benefits coverage;
  - b. Health insurance benefits coverage excluding all or part of prescription drug coverage; or
  - c. All or part of prescription drug coverage.
2. ~~Any~~Except for prescription drug coverage under subdivision c of subsection 1, a self-insurance plan under this section must be provided under an administrative services only (ASO) contract or a third-party administrator (TPA) contract under the uniform group insurance program, and may be established only if it ~~is determined by the board that~~determines an administrative services only or third-party administrator plan is less costly than the lowest bid submitted by a carrier for underwriting the plan with equivalent contract benefits. Upon establishing a self-insurance plan, the board shall solicit bids for an administrative services only or third-party administrator contract only every other biennium, and the board ~~is authorized to~~may renegotiate an existing administrative services only or third-party administrator contract during the interim. ~~In addition~~Except for prescription drug coverage under subdivision c of subsection 1, individual stop-loss coverage insured by a carrier authorized to do business in this state must be made part of any self-insured plan. All bids under this section are due no later than January first, and must be awarded no later than March first, preceding the end of each biennium. All bids under this section must be opened at a public meeting of the board.

**SECTION 4.** A new section to chapter 54-52.2 of the North Dakota Century Code is created and enacted as follows:

**Employer contribution.**

Employer contributions to the deferred compensation program established under this chapter are authorized as permitted under the Internal Revenue Code.

Approved March 8, 2019

Filed March 8, 2019

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<sup>229</sup> Section 54-52.1-04.2 was also amended by section 5 of House Bill No. 1028, chapter 462.

## CHAPTER 464

### HOUSE BILL NO. 1374

(Representatives M. Nelson, Holman)

AN ACT to create and enact a new section to chapter 50-24.1 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to the medical assistance pharmacy management program and public employees retirement system prescription drug coverage benefits; to provide for a legislative management study; to provide for application; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

##### **Pharmacy management program.**

The department shall establish a pharmacy management program to be used by the medical assistance program for Medicaid expansion for prescription drug coverage. The department shall process claims through the department's existing pharmacy claims system and Medicaid management information system and provide the contracted managed care plan with a daily pharmacy claims file for Medicaid expansion recipients.

**SECTION 2.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

##### **Prescription drug coverage - Performance audits.**

1. Except for Medicare part D, prescription drug coverage, the board may not enter or renew a contract for prescription drug coverage unless the contract authorizes the board during the term of the contract to conduct a performance audit of the prescription drug coverage and any related pharmacy benefits management services. The contract must provide:
  - a. The board must have full access to data regarding:
    - (1) The total dollars paid to the pharmacy benefits manager by the carrier and the board;
    - (2) The total amount of dollars paid to the pharmacy benefits manager by the carrier which were not subsequently paid to a licensed pharmacy in the state; and
    - (3) Payments made to all pharmacy providers.
  - b. The board must have full access to data regarding the average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefits manager to licensed pharmacies with which the pharmacy benefits manager shares common ownership or control or is affiliated.

- c. The board must have full access to data regarding the average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefits manager to pharmacies licensed in the state.
  - d. The board must have full access to data regarding any direct and indirect fees, charges, or recoupment, or any kind of assessments imposed by the pharmacy benefits manager on pharmacies licensed with which the pharmacy benefits manager shares common ownership or control or is affiliated.
  - e. The board must have full access to data regarding any direct and indirect fees, charges, or recoupment, or any kind of assessments imposed by the pharmacy benefits manager, on pharmacies licensed in the state.
  - f. The contract must provide that all drug rebates, financial incentives, fees, and discounts must be disclosed to the board.
2. The board shall use an independent auditor who has no conflict of interest with the carrier, pharmacy benefits manager, or board. The board's auditor, the insurance department, and the employee benefits programs committee may access any information the board may access under this section. All information accessed by the board, board's auditor, insurance department, or employee benefits programs committee which is trade secret is a confidential record. This subsection does not limit the information required to be disclosed to the board under subsection 1.
  3. If the board contracts directly with a pharmacy benefits manager or provides prescription drug coverage through a self-insurance plan, the contract must provide the pharmacy benefits manager shall disclose to the board and the board's auditor all rebates and any other fees that provide the pharmacy benefits manager with sources of income under the contract, including under related contracts the pharmacy benefits manager has with third parties, such as drug manufacturers.
  4. Anything the board has access to under this section, the insurance department and employee benefits committee has access to.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM PRESCRIPTION DRUG COVERAGE.** During the 2019-20 interim, the legislative management shall study the feasibility and desirability of the public employees retirement system entering a separate contract for prescription drug coverage under the uniform group insurance program. The legislative management may contract with a private third party to assist in conducting the study and identifying pros and cons relating to a carve out for prescription drug coverage under the uniform group insurance program. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 4. APPLICATION.** Section 2 of this Act applies to contracts entered by the public employees retirement system board on and after the effective date of this Act.

**SECTION 5. EFFECTIVE DATE.** Section 1 of this Act becomes effective on January 1, 2020.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 465

### HOUSE BILL NO. 1470

(Representatives Mock, P. Anderson, Hatlestad, Keiser, D. Ruby, Strinden)  
(Senators Bekkedahl, Davison, Kreun, Oban, Vedaa)

AN ACT to amend and reenact sections 54-52.4-02, 54-52.4-03, and 54-52.4-04 of the North Dakota Century Code, relating to family leave for state employees; and to provide for a legislative management study of state employee leave policies.

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

**SECTION 1. AMENDMENT.** Section 54-52.4-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-52.4-02. Family leave.**

1. An employer shall grant an employee's request for a family leave of absence for any of the following reasons:
  - a. To care for the employee's child by birth, if the leave concludes within twelve months of the child's birth.
  - b. To care for a child placed with the employee, by a child-placing agency licensed under chapter 50-12, for adoption or as a precondition to adoption under section 14-15-12, but not both, or for foster care, if the leave concludes within twelve months of the child's placement.
  - c. To care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition.
  - d. Because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's job.
  - e. Because of the death of the employee's child, if the leave concludes within six months of the child's death.
2. ~~For~~Except as otherwise provided under this section, for any combination of reasons specified in subsection 1, an employee may take family leave in any twelve-month period for not more than twelve workweeks. The twelve weeks of family leave may be taken intermittently for leave under ~~subdivision~~subdivision a or b of subsection 1 if approved by the employer. The twelve weeks of family leave may be taken intermittently for leave under ~~subdivision~~subdivision c or d of subsection 1 if the leave is medically necessary. The twelve weeks of family leave taken under subdivision e of subsection 1 may be taken intermittently if approved by the employer. If an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled must be determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule.

3. In any case in which a husband and wife entitled to family leave under this chapter are employed by the same employer, the aggregate period of family leave to which both are entitled may be limited by the employer to twelve workweeks during any twelve-month period.
4. An employee ~~shall~~ reasonably shall consider the needs of the employer in scheduling family leave under this section or in using leave under section 54-52.4-03.
5. The family leave required by this chapter is not required to be granted with pay unless otherwise specified by agreement between the employer and employee, by collective bargaining agreement, or by employer policy.
6. The family leave required by this chapter supplements any leave otherwise available to an employee.

**SECTION 2. AMENDMENT.** Section 54-52.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.4-03. Use of other available leave for bereavement of child or care of parent, spouse, or child.**

An employer that provides leave for its employees for illnesses or other medical or health reasons shall grant an employee's request to use that leave ~~to care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition for the purposes authorized under subsection 1 of section 54-52.4-02.~~ Except as otherwise provided under this section, an employee may take no more than four hundred eighty hours of leave under this section in any twelve-month period. Any leave for bereavement is limited to one hundred sixty hours and must be taken within six months following the death of the child. The employer shall compensate the employee for leave used by the employee under this section on the same basis as the employee would be compensated if the leave had been taken due to the employee's own illness or other medical or health reason.

**SECTION 3. AMENDMENT.** Section 54-52.4-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.4-04. Notice to employer.**

1. If an employee intends to ~~request~~take family leave for the reasons specified in subdivision a or b of subsection 1 of section 54-52.4-02, the employee, in a reasonable and practicable manner, shall give the employer advance notice of the expected birth or placement.
2. If an employee intends to take family leave for the reasons specified in subdivision c or d of subsection 1 of section 54-52.4-02, the employee shall:
  - a. Make a reasonable effort to schedule the planned care or treatment so ~~that it~~the leave does not unduly disrupt the employer's operations, subject to the approval of the health care provider to the child, spouse, parent, or employee; and
  - b. Give the employer advance notice of the planned care or treatment in a reasonable and practicable manner.

3. If an employee intends to take family leave for the reason specified in subdivision e of subsection 1 of section 54-52.4-02, the employee shall make a reasonable effort to schedule the leave so the leave does not unduly disrupt the employer's operations and, as appropriate, give the employer advance notice of the leave in a reasonable and practicable manner.

**SECTION 4. LEGISLATIVE MANAGEMENT STUDY - STATE EMPLOYEE LEAVE POLICIES.** During the 2019-20 interim, the legislative management shall consider studying the leave policies for state employees. The study shall include the efficacy and desirability of transitioning annual leave and sick leave into a combined paid time off system. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 466

### HOUSE BILL NO. 1064

(Representative Keiser)  
(Senator Klein)

AN ACT to create and enact a new section to chapter 54-57 of the North Dakota Century Code, relating to office of administrative hearings case processing, tracking, and reporting; and to provide for a report.

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

**SECTION 1.** A new section to chapter 54-57 of the North Dakota Century Code is created and enacted as follows:

##### **Case processing tracking and reporting.**

1. The office of administrative hearings shall track the time elapsed between the date the office receives a file from workforce safety and insurance and the date of the administrative law judge's decision, and monthly calculate a rolling six-month average of time elapsed.
2. The office of administrative hearings shall adopt case processing standards and policies, including provisions intended to meet a goal of an average of two hundred fifteen days or less per case. Administrative law judges have an average of two hundred fifteen days to issue a decision for any injured worker case from the date the office of administrative hearings receives a file from workforce safety and insurance. The date of the last assigned file is the date of assignment for all consolidated files.
3. The office of administrative hearings and workforce safety and insurance shall report statistical information regarding results under the case processing standards and policies to the legislative management and the state advisory council each quarter. The reports must include the information required under subsection 1.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 467

### SENATE BILL NO. 2318

(Senators Holmberg, Kreun, J. Lee)  
(Representatives Becker, Lefor, Mock)

AN ACT to provide a statement of legislative intent regarding campus internal local area network services; and to provide for a report to the legislative management.

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

**SECTION 1. LEGISLATIVE INTENT - CAMPUS HOUSING INTERNAL LOCAL AREA NETWORK SERVICES - REPORT TO LEGISLATIVE MANAGEMENT.** It is the intent of the sixty-sixth legislative assembly that the information technology department enter a contract to provide a solution to improve wired or wireless internal local area network service infrastructure within student housing facilities at institutions under the control of the state board of higher education which choose to receive the service. The information technology department shall collaborate with the institutions and entities under the control of the state board of higher education and include participating institutions when developing the requirements and selecting the internal local area network service solution. During the 2019-20 interim, the information technology department shall report to the legislative management regarding internal local area network services provided under this section, and submit a copy of any related contract to the legislative council.

Approved March 26, 2019

Filed March 27, 2019



## CHAPTER 468

### SENATE BILL NO. 2110

(Political Subdivisions Committee)  
(At the request of the Information Technology Department)

AN ACT to amend and reenact sections 54-59-01 and 54-59-05 of the North Dakota Century Code, relating to cybersecurity.

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

**SECTION 1. AMENDMENT.** Section 54-59-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-59-01. Definitions.**

As used in this chapter:

1. "Agency" or "entity" does not include any agricultural commodity promotion group or any occupational or professional board.
2. "Cybersecurity" means processes or capabilities, wherein, systems, communications, and information are protected and defended against damage, unauthorized use or modification, and exploitation.
3. "Cybersecurity strategy" means a vision, plan of action, or guiding principles. Unless otherwise defined in this chapter, the term does not mean an associated operational plan.
4. "Department" means the information technology department.
- ~~3-5.~~ "Information technology" means the use of hardware, software, services, and supporting infrastructure to manage and deliver information using voice, data, and video.
- ~~4-6.~~ "Network services" means the equipment, software, and services necessary to transmit voice, data, or video.

<sup>230</sup> **SECTION 2. AMENDMENT.** Section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-59-05. Powers and duties of department. (Effective through July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.

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<sup>230</sup> Section 54-59-05 was also amended by section 17 of Senate Bill No. 2055, chapter 438.

2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. With the exception of agreements entered related to the statewide interoperable radio network, an agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative management or the legislative assembly before executing a financing agreement. If the budget section or the legislative assembly does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. With the exception of financing for the statewide interoperable radio network, the department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency. The department shall

- present the information to the information technology committee on request of the committee.
8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and five hundred thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
  9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
  10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
  11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
  12. Shall perform all other duties necessary to carry out this chapter.
  13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003.
  14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
  15. Notwithstanding subsection 13, may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.
  16. Shall advise and oversee cybersecurity strategy for all executive branch state agencies, including institutions under the control of the state board of higher education, counties, cities, school districts, or other political subdivisions. For purposes of this subsection, the department shall consult with the attorney general on cybersecurity strategy.
  17. Shall advise and consult with the legislative and judicial branches regarding cybersecurity strategy.

**Powers and duties of department. (Effective after July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.

2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative management or the legislative assembly before executing a financing agreement. If the budget section or the legislative assembly does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. The department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency. The department shall present the information to the information technology committee on request of the committee.

8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and five hundred thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
10. Shall develop guidelines for reports to be provided by each agency of the executive, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, on information technology in those entities.
11. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
12. Shall perform all other duties necessary to carry out this chapter.
13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003.
14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 13, may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.
16. Shall advise and oversee cybersecurity strategy for all executive branch state agencies, including institutions under the control of the state board of higher education, counties, cities, school districts, or other political subdivisions. For purposes of this subsection, the department shall consult with the attorney general on cybersecurity strategy.
17. Shall advise and consult with the legislative and judicial branches regarding cybersecurity strategy.

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 469

### HOUSE BILL NO. 1048

(Representative Toman)

AN ACT to create and enact a new section to chapter 54-59 of the North Dakota Century Code, relating to the use of distributed ledger technologies and a pilot program.

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

**SECTION 1.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

#### **Distributed ledger technologies - Authorization - Pilot program - Report.**

The department shall research and develop the use of distributed ledger-enabled platform technologies, such as blockchains, for computer-controlled programs, data transfer and storage, and program regulation to protect against falsification, improve internal data security, and identify external hacking threats. Research must include efforts to protect the privacy of personal identifying information maintained within distributed ledger programs. The department shall select a state agency, upon the request of the state agency, to serve as a pilot program for the implementation and use of distributed ledger-enabled platform technologies. Before June first of each even-numbered year, the chief information officer shall report to the legislative management regarding the implementation of distributed ledger technologies.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 470

### HOUSE BILL NO. 1080

(Judiciary Committee)

(At the request of the Information Technology Department)

AN ACT to amend and reenact section 54-59-20 of the North Dakota Century Code, relating to criminal history background checks for contract employees of the information technology department.

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

**SECTION 1. AMENDMENT.** Section 54-59-20 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-59-20. Security background information.**

The chief information officer ~~shall~~may require as a condition of employment or as a condition of contracting with the department that individuals, including any individuals employed by the contractor or a subcontractor to perform work under the contract, who have unescorted physical access to the facilities or other security-sensitive areas of the department designated by the chief information officer submit to a criminal history record check in accordance with section 12-60-24. The chief information officer may require as a condition of contracting with the department or other state agency or department with respect to an information technology project that any individual employed by the contractor or a subcontractor to perform the work under the contract submit to a criminal history record check in accordance with section 12-60-24.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 471

### HOUSE BILL NO. 1069

(Judiciary Committee)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to amend and reenact section 54-61-04 of the North Dakota Century Code, relating to confidentiality provisions applicable to the commission on legal counsel for indigents.

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

**SECTION 1. AMENDMENT.** Section 54-61-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-61-04. Records, files, and information - Accessibility - Confidentiality.**

AnyExcept as otherwise provided in this section, any file, record, or information regarding representation of a party under sections 54-61-01 through 54-61-03 which are is attorney work-product or otherwise subject to any attorney-client privilege are is confidential and may not be disclosed except in accordance with a court order or in response to applicable discovery rules. Any file, record, or information regarding representation of a party under this chapter which is attorney work product or otherwise subject to any attorney-client privilege may be disclosed to the party to whom representation was provided, the attorney who provided the representation, and newly assigned counsel with consent of the represented party. All other case-related records are exempt from disclosure except as otherwise provided in rules adopted by the commission. Information or records obtained by the commission relating to allegations of misconduct by an attorney in the employ of, or providing indigent services for, the commission are exempt from disclosure except as otherwise provided in rules adopted by the commission unless and until the matter is referred for formal disposition under rules adopted by the supreme court.

Approved March 8, 2019

Filed March 8, 2019



## CHAPTER 472

### HOUSE BILL NO. 1521

(Representative Pollert)  
(Senator Wardner)

AN ACT to create and enact a new section to chapter 16.1-08.1 and chapter 54-66 of the North Dakota Century Code, relating to reporting campaign contributions and expenditures, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota; to amend and reenact sections 16.1-08.1-01, 16.1-08.1-03.7, 16.1-08.1-04.1, 16.1-08.1-06.2, 28-32-01, 28-32-03, 28-32-06, 28-32-07, 28-32-08, 28-32-08.1, 28-32-08.2, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-15, 28-32-16, and 28-32-18.1, subsections 2 and 4 of section 28-32-19, and sections 28-32-47, 28-32-48, and 28-32-49 of the North Dakota Century Code, relating to rulemaking procedures, implementing article XIV of the Constitution of North Dakota, and requirements for the North Dakota ethics commission; to provide for a legislative management study; to provide for a penalty; to provide an appropriation; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **16.1-08.1-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.
2. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
3. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:

- a. An individual holding public office;
  - b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
  - c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
  - d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
  - e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.
4. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.
5. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source including a conduit. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:
- a. A loan of money from a bank or other lending institution made in the regular course of business.
  - b. Time spent by volunteer campaign or political party workers.
  - c. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
  - d. Money or anything of value received for anything other than a political purpose.
  - e. Products or services for which the actual cost or fair market value are reimbursed by a payment of money.

- f. An independent expenditure.
  - g. The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.
  - h. In-kind contributions from a candidate to the candidate's campaign.
6. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.
7. "Expenditure" means:
- a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
  - b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
  - c. The transfer of funds by a political committee to another political committee.
  - d. An independent expenditure.
8. "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:
- a. Advertising;
  - b. Campaign loan repayment;
  - c. Operations;
  - d. Travel; and
  - e. Miscellaneous.
9. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate, committee, or political party.
10. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
11. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

12. "Personal benefit" means a benefit to the candidate or another person which is not for a political purpose or related to a candidate's responsibilities as a public officeholder, and any other benefit that would convert a contribution to personal income.
13. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes:
  - a. A political action committee not connected to another organization and free to solicit funds from the general public, or derived from a corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or an association that solicits or receives contributions from its employees or members or makes expenditures for political purposes on behalf of its employees or members;
  - b. A candidate committee established to support an individual candidate seeking public office which solicits or receives contributions for political purposes;
  - c. A political organization registered with the federal election commission, which solicits or receives contributions or makes expenditures for political purposes;
  - d. A multicandidate political committee, including a caucus, established to support multiple groups or slates of candidates seeking public office, which solicits or receives contributions for political purposes; and
  - e. A measure committee, including an initiative or referendum sponsoring committee at any stage of its organization, which solicits or receives contributions or makes expenditures for the purpose of aiding or opposing a measure sought to be voted upon by the voters of the state, including any activities undertaken for the purpose of drafting an initiative or referendum petition, seeking approval of the secretary of state for the circulation of a petition, or seeking approval of the submitted petitions.
14. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.
15. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a public office or any position taken in any bona fide news story, commentary, or editorial.

16. "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.
17. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.
18. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars solely to influence a statewide election or an election for the legislative assembly.

**SECTION 2. AMENDMENT.** Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-03.7. Political committees that organize and register according to federal law that make independent expenditures or disbursements to nonfederal candidates, political parties, and political committees.**

A political committee that organizes and registers according to federal law and makes an independent expenditure or makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the independent expenditure or the disbursement made. The political committee shall file a copy of the committee's federal report, and supplementary information as necessary under this section, with the secretary of state at the time of filing the report with the applicable federal agency. The report and supplementary information must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; ~~and~~
3. The date and amount of the independent expenditure or disbursement; and
4. The ultimate and true source of funds listed by contributor and subcontributor of any amount over two hundred dollars collected or used to make the independent expenditure or disbursement including:
  - a. The name and address of the contributor;
  - b. The total amount of the contribution; and
  - c. The date the last contribution was received.

**SECTION 3. AMENDMENT.** Section 16.1-08.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-04.1. Personal use of contributions prohibited.**

1. A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:
  4. a. Give a personal benefit to the candidate or another person;
  2. b. Make a loan to another person;

- 3- c. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
- 4- d. Pay a criminal fine or civil penalty.
2. The secretary of state shall assess a civil penalty upon any person that knowingly violates this section.
  - a. If the contribution used in violation of this section has a value of two thousand five hundred dollars or more, the civil penalty must be two times the value of the contribution.
  - b. If the contribution used in violation of this section has a value of less than two thousand five hundred dollars, the civil penalty must be at least two times the value of the contribution and may be up to five thousand dollars.
3. The assessment of a civil penalty may be appealed to the district court of the county where the candidate resides.

**SECTION 4. AMENDMENT.** Section 16.1-08.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-06.2. Secretary of state to provide instructions, make adjustments for inflation, and conduct training.**

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter. The secretary also shall determine adjustments for inflation of the reporting thresholds in this chapter and instruct persons submitting reports under this chapter of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this chapter, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary shall deem the reporting threshold adjusted by ten dollars.

**SECTION 5.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

**Ultimate and true source of funds - Required identification.**

1. In any statement under this chapter which requires the identification of a contributor or subcontributor, the ultimate and true source of funds must be identified.
2. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section.

<sup>231</sup> **SECTION 6. AMENDMENT.** Section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-01. 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 classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
  - b. The adjutant general with respect to the department of emergency services.
  - 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.

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<sup>231</sup> Section 28-32-01 was also amended by section 2 of Senate Bill No. 2215, chapter 144, and section 1 of Senate Bill No. 2264, chapter 265.

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- f. The dairy promotion commission.
  - g. The education factfinding commission.
  - h. The educational technology council.
  - i. The board of equalization.
  - j. The board of higher education.
  - k. The Indian affairs commission.
  - l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
  - 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 attorney general with respect to activities of the state toxicologist and the state crime laboratory.
  - s. 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.
  - t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
  - u. 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.
  - v. The commission on legal counsel for indigents.
  - w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
  - x. The industrial commission with respect to approving or setting water rates under chapter 61-40.
3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.



4. "Commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.
5. "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.
- 5-6. "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.
- 6-7. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.
- 7-8. "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.
- 8-9. "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.
- 9-10. "Person" includes an individual, association, partnership, corporation, limited liability company, the commission, a state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
- 10-11. "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.
- 11-12. "Rule" means the whole or a part of an agency or commission statement of general applicability which implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency or commission. 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 or the commission 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 or the commission 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 statementrule 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, commission-owned, or commission-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 or commission 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.

**SECTION 7. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-03. Emergency rules.**

1. If the agency, with the approval of the governor, or the commission finds that emergency rulemaking is necessary, the commission or 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 commission or 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.
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 commission's or agency's finding, and a brief statement of the commission's or agency's reasons for the finding, must be filed with the legislative council with the final adopted emergency rule.
  5. The commission or agency shall attempt to make interim final rules known to persons who the commission or agency can reasonably be expected to believe may have a substantial interest in them. As used in this subsection, "substantial interest" means an interest in the effect of the rules which surpasses the common interest of all citizens. ~~An~~The commission or an agency adopting emergency rules shall comply with the notice requirements of section 28-32-10 which relate to emergency rules and shall provide notice to the chairman of the administrative rules committee of the emergency status, declared effective date, and grounds for emergency status of the rules under subsection 2. When notice of emergency rule adoption is received, the legislative council shall publish the notice and emergency rules on its website.
  6. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

**SECTION 8. AMENDMENT.** Section 28-32-06 of the North Dakota Century Code is amended and reenacted as follows:

**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 or commission, declared invalid by a final court decision, suspended or found to be void by the administrative rules committee, or determined repealed by the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.

**SECTION 9. AMENDMENT.** Section 28-32-07 of the North Dakota Century Code is amended and reenacted as follows:

**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 legislative council within nine months of the effective date of the statutory change. If an agency or the commission 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 or commission must adopt the rule change if the request by the agency or commission is supported by evidence that the agency or commission needs more time through no deliberate fault of its own.

**SECTION 10. AMENDMENT.** Section 28-32-08 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-08. Regulatory analysis.**

1. An agency or the commission 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 or commission 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 or commission 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 or commission shall mail or deliver a copy of the regulatory analysis to any person who requests a copy of the regulatory analysis. The agency or commission may charge a fee for a copy of the regulatory analysis as allowed under section 44-04-18.
5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency or commission 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.

**SECTION 11. AMENDMENT.** Section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements - Judicial review.**

1. As used in this section:

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- a. "Small business" means a business entity, including its affiliates, which:
    - (1) Is independently owned and operated; and
    - (2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;
  - b. "Small entity" includes small business, small organization, and small political subdivision;
  - c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and
  - d. "Small political subdivision" means a political subdivision with a population of less than five thousand.
2. Before adoption of any proposed rule, the adopting agency shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
    - a. Establishment of less stringent compliance or reporting requirements for small entities;
    - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
    - c. Consolidation or simplification of compliance or reporting requirements for small entities;
    - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
    - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.
  3. Before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:
    - a. The small entities subject to the proposed rule;
    - b. The administrative and other costs required for compliance with the proposed rule;
    - c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
    - d. The probable effect of the proposed rule on state revenues; and
    - e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

4. For any rule subject to this section, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section. A small entity seeking judicial review under this section must file a petition for judicial review within one year from the date of final agency action.
5. This section does not apply to the ethics commission, any agency that is an occupational or professional licensing authority, ~~nor does this section apply to~~ and the following agencies or divisions of agencies:
  - a. Council on the arts.
  - b. Beef commission.
  - c. Dairy promotion commission.
  - d. Dry bean council.
  - e. Highway patrolmen's retirement board.
  - f. Indian affairs commission.
  - g. Board for Indian scholarships.
  - h. State personnel board.
  - i. Potato council.
  - j. Board of public school education.
  - k. Real estate trust account committee.
  - l. Seed commission.
  - m. Soil conservation committee.
  - n. Oilseed council.
  - o. Wheat commission.
  - p. State seed arbitration board.
  - q. North Dakota lottery.
6. This section does not apply to rules mandated by federal law.
7. The adopting agency shall provide the administrative rules committee copies of any regulatory analysis or economic impact statement, or both, prepared under this section when the committee is considering the associated rules.

**SECTION 12. AMENDMENT.** Section 28-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-08.2. Fiscal notes for administrative rules.**

When an agency or the commission presents rules for administrative rules committee consideration, the agency or commission shall provide a fiscal note or a statement in its testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules changes on state revenues and expenditures, including any effect on funds controlled by the agency or commission.

**SECTION 13. AMENDMENT.** Section 28-32-09 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-09. Takings assessment.**

1. An agency or the commission 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 or commission'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 or commission'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 or commission reconsider the application or need for the rule. Within thirty days of receiving the request, the agency or commission shall consider the request and shall in writing inform the landowner whether the agency or commission 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.

**SECTION 14. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-10. Notice of rulemaking - Hearing date.**

1. An agency or the commission 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, identify the emergency status and declared effective date of any emergency rules, include 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 comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number and post-office or electronic mail address 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~~An agency's full notice must include a statement of the bill number and general subject matter of any legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule. The commission's full notice must include a statement of the provision of the Constitution of North Dakota or the bill number and general subject matter of any legislation that is being implemented by the proposed rule. The agency's full notice must be filed with the legislative council, accompanied by a copy of the proposed rules.
  - b. The agency or commission shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. 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 minimum depth of approximately three inches [7.62 centimeters] and with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, identification of the emergency status and declared effective date of any emergency rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.
2. The agency or commission shall mail or deliver by electronic mail a copy of the agency's full notice and proposed rule to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule and to each person who has made a timely request to the agency or commission for a copy of the notice and proposed rule. The agency or commission 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 or commission may charge persons who are not members of the legislative assembly fees for copies of the proposed rule as allowed under section 44-04-18.
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 twenty 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 the commission and 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 and the commission 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 twenty days must elapse between the date of the publication of the notice and the date of the hearing. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council to any person who has paid the annual fee established under subsection 4.

**SECTION 15. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code 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 or commission 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 or commission shall adopt a procedure to allow interested parties to request and receive notice from the agency or commission of the date and place the rule will be reviewed by the administrative rules committee. In case of substantive rules, the agency or commission shall conduct an oral hearing. The agency or commission 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 or commission shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

**SECTION 16. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-12. Comment period.**

The agency or commission shall allow, after the conclusion of any rulemaking hearing, a comment period of at least ten days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency or commission and made a part of the rulemaking record to be considered by the agency or commission.

**SECTION 17. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-15. Filing of rules for publication - Effective date of rules.**

1. A copy of each rule adopted by an administrative agency or the commission, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule, if any, must be filed by the adopting agency or commission with the legislative council for publication of the rule in the North Dakota Administrative Code.
2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency or the commission, and filed with the legislative council, and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:
  - (1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.
  - (2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.
  - (3) Rules filed with the legislative council from February second through May first become effective on the immediately succeeding July first.
  - (4) Rules filed with the legislative council from May second through August first become effective on the immediately succeeding October first.
- b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective when publication would have occurred but for the delay.
- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

**SECTION 18. AMENDMENT.** Section 28-32-16 of the North Dakota Century Code is amended and reenacted as follows:

**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 or the commission may petition ~~such~~the agency or commission for a reconsideration of ~~any such~~the rule or for an amendment or repeal thereof. ~~Such of the rule. The~~ petition must state clearly and concisely the petitioners' alleged grounds for ~~such~~ reconsideration or ~~for~~ the proposed repeal or amendment of ~~such~~the rule. The agency or commission may grant the petitioner a public hearing ~~upon such~~on the terms and conditions as the agency may ~~prescribe~~prescribes.

**SECTION 19. AMENDMENT.** Section 28-32-18.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-18.1. Administrative rules committee review of existing administrative rules.**

1. Upon request by the administrative rules committee, an administrative agency or the commission 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 or constitutional authority has changed or been repealed since the rules were adopted or amended.
2. An agency or the commission 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 or commission initiates the request to the administrative rules committee for consideration of the amendment or repeal;
  - b. The agency or commission 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 or commission 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.

**SECTION 20. AMENDMENT.** Subsection 2 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

2. The legislative council may prescribe at the 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~~ with the format, style, and arrangement. In arranging rules for publication, the legislative council may make ~~such~~ corrections in spelling, grammatical construction, format, and punctuation of the rules as ~~determined~~ the legislative council determines are proper. 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.

**SECTION 21. AMENDMENT.** Subsection 4 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

4. The legislative council, with the consent of the adopting agency or commission, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency or commission, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and ~~stating~~ how a copy may be obtained.

**SECTION 22. AMENDMENT.** Section 28-32-47 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-47. Scope of and procedure on appeal from agency rulemaking.**

1. A judge of the district court shall review an appeal from an administrative agency's or ethics commission'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 or commission 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. a. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
  2. b. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
  3. c. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's or commission's authority to adopt.
  4. d. 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.
2. If the rulemaking action of the agency or commission is not affirmed by the court, ~~the rulemaking action~~ must be remanded to the agency or commission 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 or commission must be declared invalid for reasons stated by the court.

**SECTION 23. AMENDMENT.** Section 28-32-48 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-48. Appeal - Stay of proceedings.**

An appeal from an order or the rulemaking action of an administrative agency or the commission 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 or commission order as may be required by another statute.

**SECTION 24. AMENDMENT.** Section 28-32-49 of the North Dakota Century Code is amended and reenacted as follows:

**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 or the commission 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 or commission, 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 or the commission, the agency or commission may not be required to pay a docket fee or file a bond for costs or equivalent security.

**SECTION 25.** Chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

**54-66-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Accused individual" means a lobbyist, public official, candidate for public office, political committee, or contributor who is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.
2. "Complainant" means an individual who, in writing or verbally, submits a complaint to the commission.
3. "Complaint" means a verbal or written allegation to the commission that a lobbyist, public official, candidate for public office, political committee, or contributor has violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.
4. "Ethics commission" or "commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.
5. "Gift" means any item, service, or thing of value not given in exchange for fair market consideration including travel and recreation, except:
  - a. Purely informational material;
  - b. A campaign contribution; and
  - c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state.
6. "Influence state government action" means promoting or opposing the adoption of a rule by an administrative agency or the commission under chapter 28-32.
7. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
8. "Lobbyist" means an individual required to register under section 54-05.1-03.
9. "Public official" means an elected or appointed official of the state's executive or legislative branch, members of the commission, members of the governor's cabinet, and employees of the legislative branch.
10. "Receives the complaint" means one or more members of the commission learn of the complaint.
11. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars solely to lobby or influence state government action.

**54-66-02. Disclosure of ultimate and true source of funds.**

1. A lobbyist who expends an amount greater than two hundred dollars to lobby shall file with the secretary of state a report that includes the known ultimate and true source of funds for the expenditure. The report must be filed with the lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
2. A person that expends an amount greater than two hundred dollars, not including the individual's own travel expenses and membership dues, to influence state government action shall file with the secretary of state a report including the known ultimate and true source of funds for the expenditure. A report under this subsection must be filed on or before the August first following the date of the expenditure. The secretary of state shall provide a form for reports under this subsection and make the form electronically accessible to the public. The secretary of state also shall charge and collect fees for late filing of the reports as follows:
  - a. Twenty-five dollars for a report filed within sixty days after the deadline; or
  - b. Fifty dollars for a report filed more than sixty days after the deadline.
3. The secretary of state shall compile the reports required under this section and make the reports electronically accessible to the public.
4. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section.
5. The secretary of state shall determine adjustments for inflation of the reporting thresholds in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this section, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary of state shall deem the reporting threshold adjusted by ten dollars.

#### **54-66-03. Lobbyist gifts - Penalty.**

1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift from a lobbyist knowingly.
2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits, initiates, or facilitates, or a public official accepts a gift to or from a family member.
3. The secretary of state shall assess a civil penalty upon any individual who violates this section.
  - a. If the gift has a value of five hundred dollars or more, the civil penalty must be two times the value of the gift.
  - b. If the gift has a value of less than five hundred dollars, the civil penalty must be no less than two times the value of the gift and may be up to one thousand dollars.

#### **54-66-04. Ethics commission member terms - Meetings - Code of ethics - Compensation - Office.**

1. The terms of the initial members of the ethics commission must be staggered to ensure no more than two members' terms expire in one year. The terms of the initial members may be less than four years to accommodate the required staggering of terms.
2. Unless the complaint at issue has resulted in the imposition of a penalty or referral for enforcement under section 54-66-09, any portion of a meeting during which commission members discuss complaints, informal resolutions, attempts to informally resolve complaints, investigations, or referrals under this chapter, the identity of an accused individual or complainant, or any other matter arising from a complaint are closed meetings.
3. The commission shall abide by a code of ethics adopted in a public meeting. The code of ethics must specify when a commission member is disqualified from participating in matters before the commission.
4. Ethics commission members are entitled to:
  - a. Compensation for each day necessarily spent conducting commission business in the amount provided for members of the legislative management under section 54-35-10; and
  - b. Payment for mileage and travel expenses necessarily incurred in the conduct of commission business as provided under sections 44-08-04 and 54-06-09.
5. The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission.

#### **54-66-05. Making a complaint.**

A complaint may be made to the commission orally or in writing. If a complainant does not provide the complainant's name, address, and telephone number with the complaint, the ethics commission may not investigate, refer, or take other action regarding the complaint. The commission shall summarize each oral complaint in writing unless the complaint must be disregarded under this section.

#### **54-66-06. Informing the accused individual - Written response permitted.**

The commission shall inform an accused individual by registered mail of the identity of the complainant who made the allegation against the accused individual and include the written complaint or written summary of the oral complaint as soon as reasonably possible but no later than twenty calendar days after the commission receives the complaint. The accused individual may respond to the complaint in

writing within twenty calendar days of receipt of the complaint or summary of the complaint.

**54-66-07. Informal resolution.**

The commission shall attempt to negotiate or mediate an informal resolution between the accused individual and the complainant unless the commission disregards the complaint pursuant to section 54-66-05 or for any other reason. The accused individual may be accompanied by legal counsel in a negotiation or mediation.

**54-66-08. Investigations - Referrals.**

1. If an informal resolution is not reached under section 54-66-07, the ethics commission may:
  - a. Disregard the complaint;
  - b. Require ethics commission staff to investigate the allegations in the complaint; or
  - c. Engage an outside investigator to investigate allegations in the complaint.
2. If the commission believes a complaint contains allegations of criminal conduct, the ethics commission shall refer the allegations of criminal conduct to the bureau of criminal investigations or other law enforcement agency and may not take further action on the referred allegations. The commission shall inform the accused individual by registered mail of a referral under this section and the nature of the referred allegations as soon as reasonably possible.

**54-66-09. Investigation findings - Ethics commission determinations.**

1. An investigator, other than a law enforcement agency, of a complaint shall provide written findings of the investigation to the ethics commission within a reasonable amount of time. The ethics commission shall provide copies of the written findings to the accused individual, who may respond to the commission in person or in writing within a reasonable time. If the accused individual responds in person, no fewer than three members of the commission shall meet in a closed meeting with the accused individual. An accused individual may be accompanied by legal counsel when responding to the commission in person.
2. After providing a reasonable time for an accused individual to respond to the investigation findings and considering any response to the findings, the ethics commission shall determine whether a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying occurred, and inform the accused individual of the determination. If the commission determined a violation occurred, the commission may impose a penalty authorized by law for the violation or refer the matter to the agency with enforcement authority over the violation.
3. The commission may not terminate the employment of a public official or otherwise remove a public official from the public official's public office.



4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling, recommended finding of fact, recommended conclusion of law, finding of fact, conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the hearing officer failed to grant a request for disqualification under section 28-32-27 or failed to comply with subsection 5 of section 2 of article XIV of the Constitution of North Dakota.

#### **54-66-10. Appeals.**

An accused individual may appeal a finding of the ethics commission to the district court of the county where the accused individual resides.

#### **54-66-11. Rulemaking.**

When adopting rules, the ethics commission shall follow the provisions in chapter 28-32 which are specifically applicable to the commission.

#### **54-66-12. Confidential information.**

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying, and a court affirmed the determination if appealed, except the information may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint:
  - a. Information revealing the contents of a complaint;
  - b. Information that reasonably may be used to identify an accused individual; and
  - c. Information relating to or created as part of an investigation of a complaint.
2. If a complaint is informally resolved under section 54-66-07, the following information is a confidential record as defined in section 44-04-17.1:
  - a. Information revealing the contents of the complaint;
  - b. Information that reasonably may be used to identify the accused individual;
  - c. Information relating to or created as part of the process leading to the informal resolution; and
  - d. Information revealing the informal resolution.
3. Information that reasonably may be used to identify the complainant is confidential unless the complainant waives confidentiality, authorizes its disclosure, or divulges information that reasonably would identify the complainant. However, the ethics commission shall notify an accused individual of the identity of the complainant who made an allegation against the accused individual, and the information deemed confidential under this subsection may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint.

4. The information deemed confidential in subsections 1 and 2 may be disclosed by the ethics commission if the accused individual agrees to the disclosure.

**54-66-13. Restriction on lobbying by public officials - Penalty.**

A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.

**54-66-14. Attorney general to provide legal services.**

The attorney general shall serve as legal counsel for the commission unless the commission objects to representation by the attorney general in a specific matter. When a conflict of interest prevents the attorney general from providing legal services to the commission, the attorney general may appoint a special assistant attorney general to serve as legal counsel for the commission.

**54-66-15. Prohibition on delivering campaign contributions - Penalty.**

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the secretary of state shall assess a civil penalty of five hundred dollars upon any individual who knowingly violates this section. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor, and, if the lobbyist is a registered lobbyist, the secretary of state may revoke the lobbyist's registration. For purposes of this section, "deliver" means to transport, transfer, or otherwise transmit, either physically or electronically. This prohibition does not apply to an individual who delivers a campaign contribution to the individual's own campaign or to the campaign of the individual's immediate family member. This prohibition may not be interpreted to prohibit any person from making a campaign contribution, encouraging others to make a campaign contribution, or otherwise supporting or opposing a candidate.

**54-66-16. Removal of ethics commission members.**

1. An ethics commission member may be removed from office for:
  - a. Substantial neglect of duty;
  - b. Gross misconduct in office;
  - c. Violation of the commission's code of ethics; or
  - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires agreement by a majority of:
  - a. The governor;
  - b. The majority leader of the senate; and
  - c. The minority leader of the senate.

**54-66-17. Participation in quasi-judicial proceedings.**

For purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota, an individual is not disqualified from participating in any capacity in a quasi-judicial proceeding, including an adjudicative proceeding under chapter 28-32, due to an investment in a mutual fund, an ownership interest in one of the parties to the proceeding which is shared by the general public, and an investment or ownership interest in a retirement account of one of the parties to the proceeding.

**SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$517,155, or so much of the sum as may be necessary, to the ethics commission for the purpose of the operations of the commission, for the biennium beginning July 1, 2019, and ending June 30, 2021. The ethics commission is authorized two full-time equivalent positions for this purpose.

**SECTION 27. EFFECTIVE DATE.** Sections 1, 3, 4, and 5 of this Act, and sections 54-66-02 and 54-66-03 of the North Dakota Century Code, as created by section 25 of this Act, become effective January 5, 2021.

**SECTION 28. EMERGENCY.** Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 of this Act are declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

# TAXATION

## CHAPTER 473

### SENATE BILL NO. 2360

(Senators Dotzenrod, Erbele, Wanzek)  
(Representatives Holman, J. Nelson)

AN ACT to amend and reenact subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to the calculation of income for purposes of the farm residence property tax exemption; and to provide an effective date.

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

<sup>232</sup> **SECTION 1. AMENDMENT.** Subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- b. It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
  - (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has received annual ~~netgross~~ income from farming activities which is ~~fifty~~~~sixty-six~~ percent or more of annual ~~netgross~~ income, including ~~netgross~~ income of a spouse if married, during any of the ~~three~~~~two~~ preceding calendar years.
  - (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, with the exception of marijuana grown under chapter 19-24.1; poultry; livestock; or dairy farming in such products' unmanufactured state and has received annual ~~netgross~~ income from farming activities which is ~~fifty~~~~sixty-six~~ percent or more of annual ~~netgross~~ income, including ~~netgross~~ income of a spouse if married, during any of the ~~three~~~~two~~ preceding calendar years. For purposes of this paragraph, "farmer" includes a:
    - (a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the ~~three~~~~two~~ preceding calendar years; who normally devotes the major portion of time to

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<sup>232</sup> Section 57-02-08 was also amended by section 1 of Senate Bill No. 2278, chapter 474.

the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the ~~three~~two preceding calendar years.

- (b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
- (c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.
- (3) "Gross income" means gross income as defined under the federal Internal Revenue Code.
- (4) "NetGross income from farming activities" means taxablegross income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
- (a) ~~The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.~~
- (b) ~~Interest expenses from farming activities which have been deducted in computing taxable income.~~
- (c) ~~Depreciation expenses from farming activities which have been deducted in computing taxable income~~farming as defined for purposes of determining if an individual is a farmer eligible to use the special estimated income tax payment rules for farmers under section 6654 of the federal Internal Revenue Code [26 U.S.C. 6654].
- ~~(4)(5)~~(5) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that ~~fiftysixty-six~~ percent or more of the ~~netgross~~ income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, ~~netgross~~ income from farming activities.
- (5) ~~In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar~~

~~years. This paragraph does not apply to a retired farmer or a beginning farmer as defined in paragraph 2.~~

- (6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.
- (7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events beginning after December 31, 2019.

Approved March 26, 2019

Filed March 27, 2019

## CHAPTER 474

### SENATE BILL NO. 2278

(Senators Dotzenrod, Kannianen, Meyer)

AN ACT to amend and reenact paragraph 4 of subdivision b of subsection 15 of section 57-02-08 and subdivision f of subsection 1 of section 57-02-08.1 of the North Dakota Century Code, relating to the farm home residence property tax exemption and the homestead credit to provide for the confidentiality of documents evidencing eligibility for the exemption and credit; and to provide an effective date.

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

<sup>233</sup> **SECTION 1. AMENDMENT.** Paragraph 4 of subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- (4) When exemption is claimed under this subdivision for a residence, the ~~assessor may require that the occupant of the residence who it is claimed is a farmer shall~~ provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, net income from farming activities. The individual claiming the exemption also shall provide to the assessor, on a form prescribed by the tax commissioner, the necessary income information to demonstrate eligibility. Any income information provided to the assessor regarding eligibility for an exemption claimed under this subdivision is a confidential record.

<sup>234</sup> **SECTION 2. AMENDMENT.** Subdivision f of subsection 1 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

- f. Any person claiming the exemption under this subsection shall sign a verified statement of facts establishing the person's eligibility. Any income information contained in the statement of facts is a confidential record.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act is effective for taxable years beginning after December 31, 2019.

**SECTION 4. EFFECTIVE DATE.** Section 2 of this Act is effective for taxable years beginning after December 31, 2018.

Approved April 11, 2019

Filed April 12, 2019

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<sup>233</sup> Section 57-02-08 was also amended by section 1 of Senate Bill No. 2360, chapter 473.

<sup>234</sup> Section 57-02-08.1 was also amended by section 1 of House Bill No. 1174, chapter 486.

## CHAPTER 475

### HOUSE BILL NO. 1041

(Legislative Management)  
(Taxation Committee)

AN ACT to amend and reenact section 57-02-08.3 of the North Dakota Century Code, relating to the homestead tax credit for special assessments; to provide for application; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-02-08.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-02-08.3. Homestead credit for special assessments - Certification - Lien.**

1. Any person who has qualified for the property tax credit provided for in section 57-02-08.1 may elect to also qualify for an additional homestead credit against that person's homestead for the portion of any special assessment levied by a taxing district which becomes due for the same year. The total amount of credits allowed for any one property must not exceed six thousand dollars, adjusted annually on January first of each year after December 31, 2019, by the consumer price index, excluding any interest charged by the body levying the special assessment. This credit may be granted only at the election of the qualifying person. The person making the election shall do so by filing with the county auditor a claim for the special assessment credit on a form prescribed by the tax commissioner. The claim must be filed with the county auditor on or before February first of the year in which the special assessment installment thereof becomes payable. For purposes of this subsection, "consumer price index" means the percentage change in the consumer price index for all urban consumers in the midwest region as determined by the United States department of labor, bureau of labor statistics, for the most recent year ending December thirty-first.
2. a. By March first of each year, the county auditor of each county shall certify to the state tax commissioner, on forms prescribed by the tax commissioner, the following information:
  - (1) The name and address of each person for whom the special assessment credit provided for in subsection 1 was allowed for the preceding year.
  - (2) The amount of credit allowed for the special assessment installment thereof due for the preceding year.
  - (3) The total amount of the special assessment credits due in each special assessment district.
  - (4) Other information that the tax commissioner requires.



- b. The tax commissioner shall audit the certifications, make such corrections as may be required, and certify to the state treasurer for payment to each county by June first of each year the sum of the amounts computed by adding the credits allowed for portions of special assessments which were due for each homestead in the county for the preceding year. No more than the portion of special assessments due for the preceding year shall be allowed as a credit for any homestead in any year.
  - c. The county treasurer upon receipt of the payment from the state treasurer shall forthwith apportion and distribute the payment to each special assessment district in the county according to the total credits allowed for each respective special assessment district.
  - d. Supplemental certifications by the county auditor and by the state tax commissioner and supplemental payments by the state treasurer may be made after the dates prescribed herein to make such corrections as may be necessary because of errors therein.
3. a. Any credit allowed under subsection 1, plus interest in the amount of ~~ninesix~~ percent per year from June first of the year for which the special assessment installment for which a credit is taken becomes payable, creates a lien in favor of the state against the property upon which the special assessment credit is allowed and remains a lien upon the property from the time the credit is allowed until the lien is fully satisfied by depositing the amount of the lien in the state general fund. If the amount of the lien exceeds the market value of the property, the state may accept the amount of the market value of the property as payment in full on the lien.
  - b. (1) Except as otherwise provided in this subdivision, a transfer of title to the homestead because of sale, death, or otherwise may not be made without the lien being satisfied. When a credit under subsection 1 is allowed, the county auditor shall cause a notice of lien of record to be filed against subject property with the recorder.  
(2) The recorder may not record any deed for property on which the county auditor has determined that there is an unsatisfied lien created under this section, except for a transfer between spouses because of the death of one of them as provided in paragraph 3.  
(3) When a transfer occurs between spouses because of the death of one of them, the lien allowed by this section need not be satisfied until the property is again transferred.
  - c. This lien has precedence over all other liens except general tax liens and prior special assessment liens and shall not be divested at any judicial sale. A mistake in the description of the property covered by this lien or in the name of the owner of the property does not defeat the lien if the property can be identified by the description in the special assessment list.

**SECTION 2. APPLICATION.** This Act applies to credits granted after the effective date of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 476

### SENATE BILL NO. 2189

(Senators Cook, Kannianen, Meyer)  
(Representatives Hatlestad, Porter)

AN ACT to amend and reenact sections 57-02-51, 57-09-01, and 57-11-01 of the North Dakota Century Code, relating to the meeting of the board of equalization of a township and a city.

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

**SECTION 1. AMENDMENT.** Section 57-02-51 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-02-51. Notice of township and city equalization meetings to be published - Date of equalization meeting.**

Each year the county auditor shall publish in the official county newspaper for two successive weeks, a notice that proceedings for the equalization of assessments will be held by the several local equalization boards. The first publication of the notice may not be earlier than March first and the second publication may not be later than March twentieth. The notice must contain a statement that the proceedings will be held at the regular meeting place of the governing board or other place designated by that board of the township or city, as the case may be. The notice must also contain a statement that each taxpayer has the right to appear before the appropriate board of review or equalization and petition for correction of the taxpayer's assessment. The equalization proceedings in an organized township and a city must be held on the second Monday in April and in a city on the second Tuesday in within the first fifteen days of April.

**SECTION 2. AMENDMENT.** Section 57-09-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-09-01. Membership of board - Meeting.**

1. The township board of equalization consists of the members of the board of supervisors of each township, and the township clerk shall act as clerk of said board. The board shall meet on the second Monday in within the first fifteen days of April in each year at the usual place of meeting of the township board of supervisors.
2. ~~Notwithstanding the provisions of subsection 1, if~~ the same person performs the duties of assessor for two or more townships or cities, the township clerk may, after consultation with the assessor involved, designate the hour and day in the month of April at which the meeting provided for in subsection 1 must be held for each township board of equalization; provided, that notice of the hour and day must be published in the official newspaper of the political subdivisions involved and posted at the usual place of meeting by the township clerk at least ten days before the meeting.

**SECTION 3. AMENDMENT.** Section 57-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-11-01. Membership of board - Quorum - Meeting.**

1. The board of equalization of a city consists of the members of the governing body, and shall meet at the usual place of meeting of the governing body of the city, ~~on the second Tuesday in April in~~ within the first fifteen days of April of each year. The executive officer of the governing body shall act as chairman, but in the executive officer's absence the governing body may elect one of its members to preside. A majority of the board constitutes a quorum to transact business, and it may adjourn from day to day until its work is completed. ~~In~~ case if a quorum is not present at any time, the clerk may adjourn from day to day and publicly announce the time to which the meeting is adjourned.
2. ~~Notwithstanding the provisions of subsection 1, if~~ the same person performs the duties of assessor for two or more cities or townships, the city auditor may, after consultation with the assessor involved, designate the hour and day in the month of April at which the meeting provided for in subsection 1 must be held for each city board of equalization; provided, that notice of the hour and day must be published in the official newspaper of the political subdivisions involved and posted at the usual place of meeting by the city auditor at least ten days before the meeting.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 477

### SENATE BILL NO. 2089

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subsection to section 57-39.4-35 of the North Dakota Century Code, relating to certified automated system software requirements; to amend and reenact sections 57-05-08, 57-06-05, 57-06-06, 57-06-09, 57-06-12, and 57-33.2-07, subdivision d of subsection 26 of section 57-39.2-04, subsection 1 of section 57-39.2-12, section 57-39.4-04, subsections 6 and 7 of section 57-39.4-06, section 57-39.4-19, subsection 1 of section 57-39.4-23, subsection 3 of section 57-39.4-28, subdivision d of subsection 12 of section 57-40.2-04, and subsection 7 of section 57-40.2-07 of the North Dakota Century Code, relating to reports from centrally assessed property companies, tentative assessments of centrally assessed property, the annual meeting of the state board of equalization, the definition of supplies used for bladder dysfunction, the filing of sales tax returns, seller registration, the database of local taxing jurisdictions, uniform tax returns, notices of temporary exemption periods, the library of definitions to be used in the tax administration practices of the sales and use tax agreement, and the filing of use tax returns; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-05-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-05-08. Report by railroad corporation to state tax commissioner.**

Each railroad corporation required to be assessed under the provisions of this chapter annually shall, on or before ~~April~~May first of each year, under oath of the presiding or other chief executive officer, make and file ~~on the form and~~ in the manner ~~as prescribed by the tax commissioner~~ ~~may prescribe,~~ a report containing the following information:

1. The name of the company;
2. The laws of ~~what~~the state or country organized, the date of original organization, the date of reorganization, consolidation, or merger, with specific reference to laws authorizing the same;
3. Location of its principal office;
4. The name of the place where its books, papers, and accounts are kept;
5. The name and post-office address of the president, secretary, treasurer, auditor, superintendent, general manager, and all other general officers;
6. The name and post-office address of the chief officer or managing agent of the company in North Dakota and of all other general officers residing in this state;

7. The total number of shares of capital stock;
8. The par value of the shares of the capital stock for the whole system, showing separately the amount authorized, amount issued, amount outstanding, and dividends paid thereon;
9. If ~~such~~the capital stock has no market value, the actual value on the dates and for the periods designated by the tax commissioner ~~of this state~~;
10. The funded debt of the company for the whole system and a detailed statement of all series of bonds, debentures, or other securities, forming a part of the funded debt, at par value, with the date of issue, maturity, rate of interest, and amount of interest for the preceding year;
11. The market value of each series of funded debt securities for the whole system on the dates and for the periods designated by the tax commissioner, and if the whole or a part of the funded debt has no market value, then ~~the~~its actual value ~~thereof~~ for the dates and periods as the tax commissioner may specify;
12. ~~Such~~The general description of the operative and nonoperative real estate of the company in North Dakota as would be sufficient in a conveyance thereof, under a judicial decree, to vest in the grantee all title and interest in and to the ~~said~~ property;
13. A description of the personal property of the company;
14. The number of miles [kilometers] of each main line of railroad, the number of miles [kilometers] of each branch line and sidetracks ~~thereof within the state of~~ North Dakota;
15. The entire gross earnings of the company from operation, expenses of operation, net earnings and income from operation, and the income from other sources, for the whole system, and in North Dakota, for the years or period the tax commissioner may request or specify, not exceeding five years;
16. The location of the property of the company within this state by counties, municipalities, and districts, in the manner and detail as the tax commissioner shall prescribe; and
17. Other facts and information as the tax commissioner may require ~~in the form of returns prescribed by the tax commissioner~~ or which the company may deem material upon relating to the question of taxation of its property in this state.

**SECTION 2. AMENDMENT.** Section 57-06-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-05. Annual assessment.**

The state board of equalization, at its annual meeting in ~~August~~July, shall assess the franchises and all operative property of power, gas, pipeline, and other companies, covered by this chapter, with reference to the value thereof on the first day of January of that year.

**SECTION 3. AMENDMENT.** Section 57-06-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-06. Reports of companies.**

Each company required to be assessed under the provisions of this chapter annually, on or before the ~~fifteenth~~<sup>first</sup> day of ~~April~~<sup>May</sup>, under oath of the president or other chief executive officer, and the secretary or treasurer or auditor or superintendent of ~~such~~<sup>the</sup> company, shall make and file with the tax commissioner, in the ~~form~~<sup>manner prescribed by</sup> the tax commissioner ~~may prescribe~~, a report containing the following information, so far as applicable to the company making the report, as of January first of the year in which the report is furnished:

1. The name of the company.
2. The nature of the company, whether a person, association, corporation, or limited liability company, and under the laws of ~~what~~<sup>the</sup> state or country organized, the date of original organization, the date of reorganization, consolidation, or merger, with specific reference to laws authorizing the same.
3. Location of its principal office.
4. The name of the place where its books, papers, and accounts are kept.
5. The name and post-office address of the president, secretary, treasurer, auditor, superintendent, general manager, and all other general officers.
6. The name and post-office address of the chief officer or managing agent of the company in North Dakota and of all other general officers residing in this state.
7. The total number of shares of capital stock.
8. The par value of the shares of the capital stock for the whole system, showing separately the amount authorized, amount issued, amount outstanding, and dividends paid thereon.
9. If the capital stock has no market value, the actual value on the dates and for the periods designated by the tax commissioner ~~of this state~~.
10. The funded debt of the company for the whole system and a detailed statement of all series of bonds, debentures, or other securities, forming a part of the funded debt, at par value, with the date of issue, maturity, rate of interest, and amount of interest for the preceding year.
11. The market value of each series of funded debt securities for the whole system on the dates and for the periods designated by the tax commissioner, and if the whole or a part of the funded debt has no market value, then ~~the~~<sup>its</sup> actual value ~~thereof~~ for the dates and periods as the tax commissioner may specify.
12. The general description of the operative and nonoperative real estate of the company in North Dakota as would be sufficient in a conveyance thereof, under a judicial decree, to vest in the grantee all title and interest in and to the ~~said~~ property.

13. A description of the personal property of the company, including moneys and credits, held by the company as a whole system, and the part ~~thereof~~ of the property apportioned to the line in North Dakota.
14. The whole length of the lines of the system operated by the company and the length of the lines in North Dakota, whether operated as owner, lessee, or otherwise. The length of the line operated for the whole system and in North Dakota shall be separately reported.
15. The entire gross earnings of the company from operation, expenses of operation, net earnings and income from operation, and the income from other sources, for the whole system, and in North Dakota, for the years or period the tax commissioner may request or specify, not exceeding five years.
16. The location of the property of the company within this state by counties, municipalities, and districts, in the manner and detail as the tax commissioner shall prescribe.
17. Other facts and information as the tax commissioner may require or which the company may deem material relating to the taxation of its property in this state.

**SECTION 4. AMENDMENT.** Section 57-06-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-09. Penalty for failure to furnish report.**

If any company refuses or neglects to make the report required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall obtain the best information available on the facts necessary to be known in order to discharge the tax commissioner's duties with respect to the valuation and assessment of the property of the company. If any company fails to make the report required under this chapter on or before the ~~fifteenth~~<sup>first</sup> day of ~~April~~<sup>May</sup> of any year, the state board of equalization shall add twenty percent to the assessed value of the property of the company for that year, ~~but the tax commissioner, upon written application received on or before the fifteenth day of April, may grant an extension of time through the first day of May to file the required report.~~ If any company fails to make the report required under this chapter on or before the first day of June of any year, the state board of equalization shall add an additional ten percent to the assessed value of the property of the company for that year. On or before the first day of June, for good cause shown, the tax commissioner may waive all or any part of the penalty that attached under this section.

**SECTION 5. AMENDMENT.** Section 57-06-12 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-12. Tentative assessment to be made and notice of hearing.**

The tax commissioner shall give ten days' notice ~~by mail~~ in a manner determined by the tax commissioner to each company, or its representative in North Dakota, of the amount of its tentative assessment and the meeting of the state board of equalization on the second Tuesday of July, at which meeting each company is entitled to present evidence before the state board of equalization relating to the value of the property of the company.

**SECTION 6. AMENDMENT.** Section 57-33.2-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-33.2-07. Filing of reports with tax commissioner.**

By June first of each year, each wind farm, wind generator, and generator of electricity from sources other than coal subject to the coal conversion tax and each transmission company, distribution company, and each company that is both a transmission company and a distribution company shall file with the tax commissioner ~~on a form, in a manner~~ prescribed by the tax commissioner ~~any and all, a report containing the~~ information required by the tax commissioner. The ~~form~~ report must include a notice of a company's right to appeal its assessment to the state board of equalization before or at the ~~August~~July meeting of the state board of equalization. Required information includes:

1. a. The company name.
- b. Whether the company is an individual, partnership, association, cooperative, corporation, limited liability company, or other legal entity and the state or country and date of original organization and any reorganization, consolidation, or merger with references to specific laws authorizing ~~such~~those actions.
- c. The location of its principal office.
- d. The place where the company's books, papers, and accounts are kept.
- e. The name and mailing address of the president, secretary, treasurer, auditor, general manager, and all other general officers.
- f. The name and mailing address of the chief officer or managing agent and any general officers of the company who reside in this state.
2. A copy of each report filed with any county auditor under section 57-33.2-06.
3. A report on the megawatt-hours of electricity produced by wind generators and generators of electricity from sources other than coal in each county in the state and a map showing the location of each generator and its rated capacity, and all components of the collector system, if any.
4. A report on the megawatt-hours of electricity delivered for retail sale to consumers in each taxing district in each county during the most recently completed calendar year.

<sup>235</sup> **SECTION 7. AMENDMENT.** Subdivision d of subsection 26 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

d. "Supplies for ostomy care or bladder dysfunction" includes:

- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and

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<sup>235</sup> Section 57-39.2-04 was also amended by section 3 of House Bill No. 1131, chapter 296, section 4 of Senate Bill No. 2192, chapter 95, and section 6 of Senate Bill No. 2193, chapter 341.



supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.

- (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinent pads and pants, adult diapers, and other items used for the care and management of bladder dysfunction. For the purposes of this paragraph:

(a) "Adult diapers" means diapers other than children's diapers.

(b) "Children's diapers" means diapers marketed to be worn by children.

(c) "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

**SECTION 8. AMENDMENT.** Subsection 1 of section 57-39.2-12 of the North Dakota Century Code is amended and reenacted as follows:

1. The tax levied under this chapter is due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter is payable monthly on or before the last day of the next succeeding month. The tax commissioner may, upon request and for good cause shown, waive the requirement to file and remit monthly. The retailer shall pay the total tax due in the manner prescribed by the tax commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If the total of sales subject to the tax decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer may return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax becomes due immediately prior to the sale or discontinuance of the business and if not paid within fifteen days thereafter it becomes delinquent and subject to the penalties provided in section 57-39.2-18. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this subsection.

**SECTION 9. AMENDMENT.** Section 57-39.4-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-04. (303) Seller registration.**

Each member state shall participate in an online sales and use tax registration system in cooperation with the other member states. Under this system:

1. A seller registering under the agreement ~~shall be registered~~may register in ~~each one or more of the member states~~ utilizing the central registration system provided in article IV of the agreement.

2. ~~A model 2, model 3, or model 4 seller may elect to be registered in one or more states as a seller which anticipates making no sales into the state or states if it has not had sales into the state or states for the preceding twelve months. This election does not relieve the seller of its agreement under section 401(B) to collect taxes on all sales into the states or its liability for remitting to the proper states any taxes collected.~~ certified service provider may require a seller registering under the agreement to register in all of the full-member states as a condition of receiving certified service provider services.
3. The member states agree not to require the payment of any registration fees or other charges for a seller ~~to register~~ registering through the central registration system in a state in which the seller has no legal requirement to register.
4. A written signature from the seller is not required.
5. An agent may register a seller under uniform procedures adopted by the member states.
6. A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.
7. Nothing in this section shall be construed to relieve a seller of any legal obligation it may have under a state's laws to register in that state or its obligation to collect and remit taxes for at least thirty-six months in a state and meet all other requirements for amnesty set out in section 402 of the agreement in order to be eligible for amnesty in the state.
8. Whenever a state joins the agreement, sellers already registered under the agreement shall be ~~registered in the new~~ notified by the governing board and the sellers may elect to also be registered in the new state as follows:
  - a. ~~Model 1 sellers will be automatically registered in such state.~~
  - b. ~~Model 2, model 3, and model 4 sellers will be automatically registered in the new state but may elect to be registered as a seller which anticipates making no sales into the new state.~~
9. ~~Upon registration, the~~ The governing board shall provide to the seller make information available regarding the requirements and options for filing a simplified electronic return and for filing remittances in any member state. ~~Member states~~ A member state may provide information to sellers concerning other tax return filing options in that state.
10. The governing board shall cause the system for registering under the agreement to include a feature that allows sellers registered under the agreement to update relevant registration data in the system and have such updated data provided to all ~~member~~ affected states utilizing the system. The governing board shall establish conditions and procedures to allow states which are not members of the agreement to participate in the registration system.

**SECTION 10. AMENDMENT.** Subsections 6 and 7 of section 57-39.4-06 of the North Dakota Century Code are amended and reenacted as follows:

6. Provide and maintain a database that assigns the proper tax rates and jurisdictions to each five-digit and nine-digit zip code within a member state to ~~the proper tax rates and jurisdictions~~. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a ~~purchase transaction~~ after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the ~~nine-digit zip code designation~~ tax rate and jurisdiction by ~~utilizing~~ using software approved by the governing board that makes this ~~designation~~ assignment from the street address and the five-digit zip code information applicable to a ~~purchase~~ the transaction.
7. Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection 6. The database records must be in the same approved format as the database records under subsection 6 and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act [4 U.S.C. 119(a)]. The governing board may allow a member state to require sellers that register under this agreement to use an address-based database provided by that member state. If any member state develops address-based assignment database records pursuant to the agreement, a seller or certified service provider may use those database records in place of the five-digit and nine-digit zip code database records provided for in subsection 6. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a ~~purchase transaction~~. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a ~~purchase transaction~~ after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by ~~utilizing~~ using software approved by the governing board that makes this assignment from the address and zip code information applicable to the ~~purchase~~ transaction.

**SECTION 11. AMENDMENT.** Section 57-39.4-19 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-19. (318) Uniform tax returns.**

Each member state shall:

1. Require that only a single tax return for each taxing period for each seller be filed for the member state to include all the taxing jurisdictions within the member state.

2. a. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.
- b. When the due date for a return falls on a Saturday or Sunday or legal holiday in the subject member state, the return shall be due on the next succeeding business day. If the return is filed in conjunction with a remittance and the remittance cannot be made under subdivision b of subsection 5 of section 57-39.4-20, the return shall be accepted as timely filed on the same day as the remittance under that subsection.
3. Make available to all sellers, whether or not registered under the agreement, except sellers of products qualifying for exclusion from the provisions of section 57-39.4-09 of this agreement, a simplified return that is filed electronically as follows:
  - a. The simplified electronic return hereinafter SER shall be in a form approved by the governing board and shall contain only those fields approved by the governing board. The SER shall contain two parts. Part 1 shall contain information relating to remittances and allocations and part 2 shall contain information relating to exempt sales.
  - b. Each member state must notify the governing board if it requires the submission of the part 2 information provided no state may require the submission of part 2 information from a model 4 seller which has no legal requirement to register in the state.
  - c. Returns shall be required as follows:
    - (1) Certified service providers must file an SER in all member states in which the model 1 seller is registered under the agreement, on behalf of model 1 sellers. Certified service providers, on behalf of these sellers, shall file the audit reports provided for in article V of the rules and procedures of the agreement for the states, and in addition, shall be required to file part 1 of the SER each month for each member state in which the model 1 seller is registered under the agreement. A state shall allow a model 1 seller to file both part 1 and part 2 of the SER. A model 1 seller which chooses to file both part 1 and part 2 of the SER shall still be required to file the audit reports provided for in article V of the rules and procedures of the agreement.
    - (2) Model 2 and model 3 sellers must file an SER in all member states ~~other than states for which they have indicated that they anticipate making no sales~~ in which they are registered under the agreement. These sellers shall file part 1 of the SER every month for all states in which they anticipate making sales are registered under the agreement. These sellers ~~need not file part 2 information until January 1, 2012.~~ After this date, they shall have the following options for meeting their obligation to furnish part 2 information:
      - (a) File part 2 of the SER together with part 1 of the SER every month;  
or
      - (b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months

of the same calendar year and shall only require annual and not monthly totals. The sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

- (3) Every member state shall allow model 4 sellers to file an SER. The sellers shall file part 1 of the SER every month unless a state allows less frequent filing. Model 4 sellers which have a legal requirement to register in the state shall have the following options for meeting their obligation to furnish part 2 information:

- (a) File part 2 of the SER together with part 1 of the SER; or
- (b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

These sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

Model 4 sellers which elect not to file an SER shall file returns in the form under schedules afforded to sellers not registered under the agreement according to the requirements of each member state.

- (4) ~~No later than January 1, 2013, every~~ Every member state shall allow sellers not registered under the agreement that are registered in the state to file an SER. These sellers shall file part 1 of the SER every month unless a state allows less frequent filing and shall have the following options for meeting their obligation to furnish part 2 information:

- (a) File part 2 of the SER together with part 1 of the SER; or
- (b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

These sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

- d. A state which requires the submission of part 2 information under paragraph 2 may provide an exemption from this requirement to a seller under terms and conditions set out by the state.
- e. A state may require a seller which elects to file an SER to give at least three months' notice of the seller's intent to discontinue filing an SER.

4. ~~Not require the filing of a return from a seller registered under the agreement which has indicated at the time of registration that it anticipates making no sales which would be sourced to the state under the agreement. A seller shall lose this exemption upon making any taxable sales into the state and shall file a return in the month following the sale. A state may, but is not required to, allow a seller to regain such filing exemption upon such terms and conditions as the state may impose.~~
5. Adopt web services as the standardized transmission process that allows for receipt of uniform tax returns and other formatted information as approved by the governing board. The process must provide for the filing of separate returns for multiple legal entities in a single transmission for each state and will not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process will allow a certified service provider, tax preparer, or any other authorized person to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.
- 6.5. Give notice to a seller registered under this agreement which has no legal requirement to register in the state, of a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return provided a member state may establish a liability amount for taxes based solely on the seller's failure to timely file a return if such seller has a history of nonfiling or late filing.
- 7.6. Nothing in this section shall prohibit a state from allowing additional return options or the filing of returns less frequently.

**SECTION 12. AMENDMENT.** Subsection 1 of section 57-39.4-23 of the North Dakota Century Code is amended and reenacted as follows:

1. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:
  - a. Not apply an exemption unless the items to be exempted are specifically defined in part II or part III(B) of the library of definitions and the exemptions are uniformly applied to state and local sales and use taxes.
  - b. Provide notice of the exemption period at least sixty days prior to the first day of the calendar ~~quarter~~month in which the exemption period will begin.
  - c. Not apply an entity-based or use-based exemption except a member state may limit a product-based exemption to items purchased for personal or nonbusiness use.
  - d. Not require a seller to obtain an exemption certificate or other certification from a purchaser for items to be exempted during a sales tax holiday.

**SECTION 13. AMENDMENT.** Subsection 3 of section 57-39.4-28 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as specifically provided in sections 57-39.4-17 and 57-39.4-33.1, and the library of definitions, a member state shall impose a sales or use tax on all products or services included within each part II or part III(B) definition or exempt from sales or use tax all products or services within each definition.

including all products and services listed in the rules, appendices, and interpretive opinions adopted by the governing board. The requirements of this section shall only apply to part III(B) definitions to the extent such definitions are used in the administration of a sales tax holiday. A member state is not in compliance with the agreement if the member state excludes any product or service that is included within a product definition or includes a product or service that is excluded from a product definition.

**SECTION 14.** A new subsection to section 57-39.4-35 of the North Dakota Century Code is created and enacted as follows:

For purposes of this section:

a. "Certify a product category" means the state reviews the product category and determines that the taxability of a product properly included in that product category is consistent with that state's laws. The state certifies that the taxability is based only on:

- (1) The product-based exemptions or impositions provided by state law;
- (2) The specific description provided by the seller or certified service provider; and
- (3) Not requiring either the purchaser or seller to produce documentation to claim the exemption.

b. (1) "Product category" means:

- (a) Terms specifically defined in appendix C, part II or part III of the agreement, such as clothing, durable medical equipment, food, drugs, soft drinks, and disaster preparedness supplies;
- (b) Subcategories of terms specifically defined in subparagraph a that may be taxed differently than the product category as a whole, such as oxygen delivery equipment, kidney dialysis equipment, prewritten computer software delivered electronically, and prepared food that requires additional cooking by the consumer;
- (c) Terms representing groups of like products that do not fall within subparagraph a or b, such as other digital products, building materials, furniture, or motor vehicles; and
- (d) Subcategories of subparagraph c that are taxed differently than the product category as a whole, such as printed materials, newspapers, and catalogs.

- (2) The term does not include any individual product that properly falls within any product category in a state, such as shirts, reusable thermometers, ultrasound machines, bread, tables, chairs, automobiles, or motorcycles, unless the individual product is taxed differently than any other products within that product category; or "tangible personal property".

**SECTION 15. AMENDMENT.** Subdivision d of subsection 12 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. "Supplies for ostomy care or bladder dysfunction" includes:
- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
  - (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinence pads and pants, adult diapers, and other items used for the care and management of bladder dysfunction. For the purposes of this paragraph:
    - (a) "Adult diapers" means diapers other than children's diapers.
    - (b) "Children's diapers" means diapers marketed to be worn by children.
    - (c) "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

**SECTION 16. AMENDMENT.** Subsection 7 of section 57-40.2-07 of the North Dakota Century Code is amended and reenacted as follows:

7. If total sales and purchases subject to sales and use taxes for the preceding calendar year equal or exceed three hundred thirty-three thousand dollars, the tax levied by this chapter is payable monthly on or before the last day of the next succeeding month. The tax commissioner may, upon request and for good cause shown, waive the requirement to file and remit monthly. The amount of monthly tax payable, manner of payment, filing of the return, penalty, and waiver of penalty must be that prescribed in subsection 1 of section 57-39.2-12. Penalty and interest for failure to file a return or corrected return or to pay the tax imposed must be that prescribed in section 57-40.2-15. If a person is required to file more than one return pursuant to this section, the monthly payment requirement applies separately to each return. If total sales and purchases subject to sales and use taxes for any succeeding calendar year decrease below three hundred thirty-three thousand dollars, a person may return to quarterly installments. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this section.

**SECTION 17. EFFECTIVE DATE.** Sections 1, 2, 3, 4, 5, and 6 of this Act are effective for taxable years beginning after December 31, 2018.

**SECTION 18. EFFECTIVE DATE.** Sections 8 and 16 of this Act are effective for sales and use tax returns due after July 31, 2019.

Approved April 8, 2019

Filed April 9, 2019



## CHAPTER 478

### HOUSE BILL NO. 1439

(Representatives Porter, Delzer, Dockter, Headland, Howe, Mock, Pollert)  
(Senators Cook, Dotzenrod, Meyer, Unruh, Wardner)

AN ACT to amend and reenact sections 57-06-17.1 and 57-39.2-04.14, subsection 3 of section 57-51.1-03, and section 57-60-06 of the North Dakota Century Code, relating to a property tax exemption for pipelines used for secure geologic storage, a sales and use tax exemption for materials used for secure geologic storage, an oil extraction tax exemption for the incremental production from tertiary recovery projects using carbon dioxide, and property classification of secure geologic storage equipment for coal conversion tax purposes; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-06-17.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-06-17.1. Carbon dioxide pipeline exemption.**

Property, not including land, is exempt from taxation during construction and for the first ten full taxable years following initial operation if it consists of a pipeline, constructed after 1996, and necessary associated equipment for the transportation or storage of carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas.

**SECTION 2. AMENDMENT.** Section 57-39.2-04.14 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-04.14. Sales and use tax exemption for materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas.**

1. Gross receipts from sales of tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. Tangible personal property used to replace an existing system to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas does not qualify for exemption under this section unless the replacement creates an expansion of the system.
2. To receive the exemption under this section at the time of purchase, the owner of the gas compressing, gathering, collecting, storing, transporting, or injecting system must receive from the tax commissioner a certificate that the tangible

personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas qualifies for the exemption. If a certificate is not received before the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.

3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner of the gas compressing, gathering, collecting, storing, transporting, or injecting system may apply to the tax commissioner for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section. Application for a refund must be made at the time and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
4. This chapter and chapter 57-40.2 apply to the exemption under this section.

**SECTION 3. AMENDMENT.** Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. 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 is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project from a horizontal well drilled and completed within the Bakken and Three Forks formations which has been certified as a qualified project by the industrial commission is not exempt from July 1, 2015, through June 30, 2017, and is thereafter exempt from any taxes imposed under this chapter for a period of five years from July 1, 2017, or the date the incremental production begins, whichever is later.
- c. The incremental production from a tertiary recovery project that injects more than fifty percent carbon dioxide produced from coal and has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of twenty years from the date the incremental production begins or from the date the project is certified by the industrial commission as meeting the fifty percent or more carbon dioxide produced from coal injection requirement, whichever is later. To qualify for the exemption under this subsection, the project must be located outside the Bakken or Three Forks formations and must use carbon dioxide produced from coal. The incremental production that has been certified by the industrial commission under this section must be used to calculate the exemption under this subdivision.
- d. The incremental production from a tertiary recovery project that injects more than fifty percent carbon dioxide produced from coal and has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins or from the date the project is

certified by the industrial commission as meeting the fifty percent or more carbon dioxide produced from coal injection requirement, whichever is later. To qualify for the exemption under this subsection, the project must be located within the Bakken or Three Forks formations and must use carbon dioxide produced from coal. The incremental production that has been certified by the industrial commission under this section must be used to calculate the exemption under this subdivision.

e. 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.
- (7) For purposes of determining the exemption provided for in subdivisions c and d, and with respect to a unit where a tertiary recovery project was in existence, 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 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 shall upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, in 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.

- (8) For purposes of determining the exemption provided for in subdivisions c and d, and with respect to a unit where a tertiary recovery project was in existence, 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 tertiary recovery project and the total amount of oil that would have been produced from the unit if the new 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 new tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of the tertiary recovery project that was previously in existence. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new 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 new tertiary recovery project is certified.

d.f. The industrial commission shall adopt rules relating to this exemption ~~that~~which must include procedures for determining incremental production as defined in subdivision ee.

**SECTION 4. AMENDMENT.** Section 57-60-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-60-06. Property classified and exempted from ad valorem taxes - In lieu of certain other taxes - Credit for certain other taxes.**

Each coal conversion facility and any carbon dioxide capture system located at the coal conversion facility, and any equipment directly used for secure geologic storage of carbon dioxide or enhanced recovery of oil or natural gas must be classified as personal property and is exempt from all ad valorem taxes except for taxes on the land on which the facility, capture system, or equipment is located. The exemption provided by this section may not be interpreted to apply to tangible personal property incorporated as a component part of a carbon dioxide pipeline but this restriction does not affect eligibility of such a pipeline for the exemption under section 57-06-17.1. The taxes imposed by this chapter are in lieu of ad valorem taxes on the property so classified as personal property.

**SECTION 5. EFFECTIVE DATE.** Section 3 of this Act becomes effective on July 1, 2019. Sections 1 and 4 of this Act are effective for taxable years beginning after December 31, 2018. Section 2 of this Act is effective for taxable events occurring after June 30, 2019.

Approved April 24, 2019

Filed April 24, 2019

## CHAPTER 479

### SENATE BILL NO. 2350

(Senators Cook, Patten)  
(Representatives Grueneich, Hatlestad)

AN ACT to create and enact a new section to chapter 57-06 and a new section to chapter 57-33.2 of the North Dakota Century Code, relating to county auditor verification of information reported by public utility companies and electric generation, distribution, and transmission companies; to amend and reenact sections 57-06-21, 57-08-01, and 57-33.2-06 of the North Dakota Century Code, relating to the review of public utility assessments and public utility and electric generation, distribution, and transmission reports received by county auditors; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-06-21 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-06-21. Maps - Reports to county auditors.**

On or before the fifteenth day of

1. By January first of each year, the county auditor shall provide to each company required to be assessed under this chapter a current map of the county showing the boundaries of each taxing district in the county.
2. By February fifteenth of each year, each company required to be assessed under this chapter shall file with the:
  - a. The county auditor of each county within which any part of its operative property is located a, a report containing a copy of the information required in subsection 16 of section 57-06-06, subsection 1 of section 57-06-07, and subsection 1 of section 57-06-08. The report giving must provide a general description of all its the company's property located within the county, with operative and nonoperative property listed separately. The report must give the length of the line or lines within the county and the length in each taxing district of each line constituting part of a single and continuous line or property. The company also shall file with the
  - b. The county auditor and the tax commissioner, a map of all of its the company's lines within the county showing clearly the length of its the company's lines within each taxing district as of January first of that year. To facilitate the making of the maps, the county auditor, on or before the first day of January of each year, shall provide to each company a current map of the county showing the boundaries of each taxing district in the county.

**SECTION 2.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

### **Verification by county auditor of reports.**

By May thirty-first of each year, the county auditor shall verify to the tax commissioner, in the manner and detail prescribed by the tax commissioner, the accuracy of the information filed with the county auditor under subdivision a of subsection 2 of section 57-06-21.

**SECTION 3. AMENDMENT.** Section 57-08-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-08-01. Action to review assessment of public utility.**

If any company whose property has been valued and assessed for taxation purposes by the state board of equalization under the constitution or statutes of this state, or against whom any tax is levied or assessed by ~~said~~the board, feels aggrieved for any reason with the assessment ~~so~~made, the company may bring an action in the district court of the county in which the company maintains its principal place of business in this state, against the state and any subdivisions ~~thereof~~of the state which may be interested, for relief therefrom. ~~Any such~~The action must be brought on or before the date on which the taxes to be collected under the assessment involved become due. Any adjustments to an assessment brought forward after October first must be applied to the following taxable year.

**SECTION 4. AMENDMENT.** Section 57-33.2-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-33.2-06. Maps - Transmission and distribution line and electric generation property location reports to county auditors.**

1. By February first of each year, the county auditor shall provide each company subject to taxation under this chapter an accurate map of the county showing the boundaries of each taxing district in the county.
2. By April fifteenth of each year, each company subject to taxation under this chapter shall file, with the county auditor of each county in which any of its electric generation, transmission, or distribution line property is located the following information:
  1. a. Each transmission or distribution company shall file a report showing the length and nominal operating voltage of its transmission and distribution line within the county and within each taxing district within the county. Reports under this subsection must be based upon nominal operating voltage, ownership, and location of transmission and distribution lines as of January first of each year. Reports under this subsection must be prepared to distinguish transmission lines from distribution lines.
  2. b. Each electric generation company shall file a report ~~showing~~containing a copy of the information required in subsection 3 of section 57-33.2-07 and the location and rated capacity of each wind generator or grid-connected generator within the county and each taxing district in the county. Reports under this subsection must be based upon the rated capacity, ownership, and location as of January first of each year.

~~By February first of each year, the county auditor shall provide each company subject to taxation under this chapter with an accurate map of the county showing the boundaries of each taxing district in the county.~~



**SECTION 5.** A new section to chapter 57-33.2 of the North Dakota Century Code is created and enacted as follows:

**Verification by county auditor of reports.**

By June thirtieth of each year, the county auditor shall verify to the tax commissioner, in the manner and detail prescribed by the tax commissioner, the accuracy of the information filed with the county auditor under subsection 2 of section 57-33.2-06.

**SECTION 6. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 480

### SENATE BILL NO. 2232

(Senators Krebsbach, Burckhard, Hogue, O. Larsen)  
(Representatives M. Ruby, Schobinger)

AN ACT to amend and reenact sections 40-55-09 and 57-15-12 of the North Dakota Century Code, relating to levy authority for city public recreation systems and general fund levy limitations in park districts; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 40-55-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-55-09. Voter-approved levy authority for city public recreation system.**

1. The governing body of a city may, and upon receipt of a petition signed by at least ten qualified electors but not less than five percent of those qualified electors who voted at the last general election of the city shall, submit to the qualified electors the question of approval or disapproval of voter-approved levy authority for establishment, maintenance, and conduct of a public recreation system at the next general election or special municipal election if the question to be placed on the ballot is filed thirty days prior to the date of the election. The ballot measure question to approve a levy under this section must be stated to ask if the elector approves a voter-approved tax by the city for a public recreation system in a stated number of mills, not exceeding six mills. If approved by a majority of city electors voting on the question, the city may levy an additional tax within the limitation of subsection 13 of section 57-15-10. After January 1, 2015, approval or reauthorization by electors of voter-approved levy authority under this section may not be effective for more than ten taxable years. Any voter-approved levy under this section or section 40-55-08 approved by the electors of a city before January 1, 2015, remains effective for ten taxable years or the period of time for which it was approved by the electors after it was approved, whichever is less, under the provisions of law in effect at the time it was approved. The governing body of the city shall discontinue the levy for public recreation purposes if the qualified voters, at a regular or special election, by a majority vote on the proposition, decide to discontinue the levy. A vote of the qualified electors is not required to discontinue the levy under this section if the levy authority is no longer required as a result of a merger between a park district and a city public recreation system.
2. A vote that occurred pursuant to subsection 1 before a city public recreation system and a park district merged pursuant to subsection 2 of section 57-15-12 is no longer valid to authorize levying mills for a city public recreation system.

**SECTION 2. AMENDMENT.** Section 57-15-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-15-12. General fund levy limitations in park districts.**

1. A park district may levy for general fund purposes up to thirty-eight mills on the taxable valuation of property in the district, subject to the higher of the number of mills determined under the following limitations:
  - a. The general fund mill levy determined based upon the highest amount in dollars the park district levied for general fund purposes for the three taxable years immediately preceding the current year, plus twelve percent; or
  - b. The general fund mill levy determined by combining the highest number of mills the park district levied for general fund purposes plus the number of mills levied for employee pension contributions under section 40-49-22, old-age and survivors' insurance under section 52-09-08, an employee retirement program established by the governing body, and for forestry purposes for any one of the three taxable years immediately preceding the current year.
2. ~~For taxable years after 2014, the highest amount in dollars the park district levied for general fund purposes for the three immediately preceding taxable years for purposes of subdivision a of subsection 1, must be adjusted by adding the highest amount in dollars the park district levied in any one of the three immediately preceding taxable years for the combined levies for employee pension contributions under section 40-49-22, old age and survivors' insurance under section 52-09-08, an employee retirement program established by the governing body, and for forestry purposes under section 57-15-12.1.~~
3. ~~Notwithstanding the limitation in subsection 1, if a city public recreation system established under chapter 40-55 is merged with a park district that levied more than thirty-eight mills for the 2014 taxable year in the combined number of mills levied for general fund purposes plus the number of mills levied for the additional purposes of employee pension contributions under section 40-49-22, old-age and survivors' insurance under section 52-09-08, an employee retirement program established by the governing body, and for forestry purposes may levy for general fund purposes for taxable year 2015 the number of combined mills determined for the 2014 taxable year. A park district may levy for general fund purposes for taxable year 2016 thirty-eight mills plus seventy-five percent of the number of mills levied for the additional purposes listed in this subsection for the 2014 taxable year. A park district may levy for general fund purposes for taxable year 2017 thirty-eight mills plus fifty percent of the number of mills levied for the additional purposes listed in this subsection for the 2014 taxable year. A, the park district may levy up to thirty-eight mills on the taxable valuation of property in the district for general fund purposes for the first taxable year 2018 thirty-eight mills plus twenty-five percent of the number of mills levied for the additional purposes listed in this subsection for the 2014 taxable year in which mills are levied for the merged district.~~
- 4-3. 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 thirty-eight mills on the dollar of the taxable valuation of the district for the current year. After January 1, 2015, approval or reauthorization by electors of voter-approved levy authority under this section may not be effective for more than ten taxable years.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 481

### SENATE BILL NO. 2255

(Senators Cook, Schaible)

AN ACT to amend and reenact section 57-15-13 of the North Dakota Century Code, relating to changes in school district tax levies; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-15-13 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-15-13. School district tax levies.**

School district taxes must be levied by the governing body of each school district on or before the tenth day of August of each year. The governing body of the school district may ~~amend~~increase or decrease its tax levy and budget for the current fiscal year on or before the tenth day of October of each year but the certification must be filed with the county auditor within the time limitations under section 57-15-31.1. Taxes for school district purposes must be based upon an itemized budget statement which must show the complete expenditure program of the district for the current fiscal year and the sources of the revenue from which it is to be financed. The school board of each public school district, in levying taxes, is limited by the amount necessary to be raised for the purpose of meeting the appropriations included in the school budget of the current fiscal year, and the sum necessary to be provided as an interim fund, together with a tax sufficient in amount to pay the interest on the bonded debt of the district and to provide a sinking fund to pay and discharge the principal thereof at maturity.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 482

### SENATE BILL NO. 2052

(Senators Schaible, Heckaman, Rust)  
(Representatives Owens, Heinert)

AN ACT to create and enact a new section to chapter 15.1-09 and a new section to chapter 57-15 of the North Dakota Century Code, relating to school district safety plans and levy authority for a school safety plan; to amend and reenact section 57-15-14.2 of the North Dakota Century Code, relating to school district levies for a school safety plan; to provide an effective date.

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

**SECTION 1.** A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

**School district safety plan - Establishment of school safety plan fund - Approval - Open records exemption.**

The board of a school district may develop a school safety plan, in consultation with the qualified electors residing within the district, and establish and maintain a school safety plan fund subject to the limitations in section 57-15-14.2. A school safety plan developed by the board of a school district is exempt from the provisions of section 44-04-18 and section 6 of article XI of the Constitution of North Dakota with respect to aspects of the plan addressing the security of students.

**SECTION 2.** A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

**Tax levy for school safety plan fund.**

The school board of a school district may levy taxes for a school safety plan fund, subject to the limitations in section 57-15-14.2, when authorized to do so by a majority of the qualified electors of a school district voting upon the question at any regular or special school district election. The ballot must specify the number of mills proposed for approval and the number of years for which that approval is to apply. Approval or reauthorization by electors of levy authority under this section may not be effective for more than five taxable years.

<sup>236</sup> **SECTION 3. AMENDMENT.** Section 57-15-14.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-14.2. School district levies.**

1. For taxable years after 2013, the board of a school district may levy a tax not exceeding the amount in dollars that the school district levied for the prior year, plus twelve percent, up to a levy of seventy mills on the taxable valuation of the district, for any purpose related to the provision of educational services. The proceeds of this levy must be deposited into the school district's general

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<sup>236</sup> Section 57-15-14.2 was also amended by section 17 of Senate Bill No. 2265, chapter 149.

fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.

2. For taxable years after 2013, the board of a school district may levy no more than twelve mills on the taxable valuation of the district, for miscellaneous purposes and expenses. The proceeds of this levy must be deposited into a special fund known as the miscellaneous fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.
3. The board of a school district may levy no more than three mills on the taxable valuation of the district for deposit into a special reserve fund, in accordance with chapter 57-19.
4. The board of a school district may levy no more than the number of mills necessary, on the taxable valuation of the district, for the payment of tuition, in accordance with section 15.1-29-15. The proceeds of this levy must be deposited into a special fund known as the tuition fund and used in accordance with this subsection. The proceeds may not be transferred into any other fund.
5. The board of a school district may levy no more than five mills on the taxable valuation of the district, pursuant to section 2 of this Act, for purposes of developing a school safety plan in accordance with section 1 of this Act. The proceeds of this levy must be deposited into a special fund known as the school safety plan fund and used in accordance with this subsection.
6. Nothing in this section limits the board of a school district from levying:
  - a. Mills for a building fund, as permitted in sections 15.1-09-49 and 57-15-16; and
  - b. Mills necessary to pay principal and interest on the bonded debt of the district, including the mills necessary to pay principal and interest on any bonded debt incurred under section 57-15-17.1 before July 1, 2013.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 483

### SENATE BILL NO. 2331

(Senators Erbele, Dotzenrod, Wardner)  
(Representatives Mock, Brandenburg)

AN ACT to amend and reenact section 57-33.2-18 of the North Dakota Century Code, relating to allocation of wind generation tax revenue; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-33.2-18 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-33.2-18. Deposit of revenue - Report to treasurer.**

1. The commissioner shall transfer to the state treasurer, for deposit in the general fund, thirty-three percent of the revenue collected under subsection 1 of section 57-33.2-04 for wind projects that:
  - a. Begin initial construction after December 31, 2020.
  - b. Have been in operation for twenty years or more from the date of first assessment, whether initially taxed under section 57-06-14.1 or 57-33.2-04.
2. The commissioner shall transfer the remaining revenue collected under this chapter to the state treasurer for deposit in the electric generation, transmission, and distribution tax fund. With each transfer under this section, the commissioner shall provide a report showing the information necessary for the state treasurer to allocate the revenue under section 57-33.2-19.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2019.

Approved March 28, 2019

Filed March 29, 2019



## CHAPTER 484

### HOUSE BILL NO. 1384

(Representatives Nathe, Bosch, Dockter, Martinson)  
(Senators Patten, J. Roers)

AN ACT to amend and reenact section 57-38-01.7 of the North Dakota Century Code, relating to the individual income tax credit for charitable contributions; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 57-38-01.7 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-38-01.7. Income tax credit for charitable contributions - Limitation.**

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a nonrefundable credit against the income tax liability under section 57-38-30 or, ~~in the case of contributions by a passthrough entity, under section 57-38-30.3~~ for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~twenty~~twenty-five percent of the taxpayer's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a nonrefundable credit against the income tax liability under section 57-38-30 or, ~~in the case of contributions by a passthrough entity, under section 57-38-30.3~~ for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~twenty~~twenty-five percent of the taxpayer's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
3. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a nonrefundable credit against the income tax liability under section 57-38-30 or, ~~in the case of contributions by a passthrough entity, under section 57-38-30.3~~ for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of primary education, located within the state. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~twenty~~twenty-five percent of the taxpayer's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

4. A passthrough entity entitled to a credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
5. For purposes of this section, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in the state of North Dakota which normally maintains a regular faculty and curriculum, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the state department of public instruction, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in the ninth through the twelfth grades. The term "nonprofit private institution of primary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the state department of public instruction, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in kindergarten through eighth grade.
6. For purposes of this section, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed in section 57-38-34 for filing the return for that taxable year, including extensions granted by the commissioner.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for the first two taxable years beginning after December 31, 2018, after which this Act becomes ineffective.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 485

### HOUSE BILL NO. 1406

(Representatives J. Nelson, Hager, Sanford, Schreiber-Beck)  
(Senators Dever, Heckaman, Poolman)

AN ACT to create and enact a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax credit for the employment of individuals with developmental disability or severe mental illness; to amend and reenact section 57-38-01.16 of the North Dakota Century Code, relating to an income tax credit for the employment of individuals with developmental disabilities or severe mental illness; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.16. Income tax credit for employment of individuals with developmental disabilities or chronically mentally ill personssevere mental illness.**

1. A taxpayer filing an income tax return under this chapter may claim a credit against the tax liability imposed under section 57-38-30 or section 57-38-30.3 for a portion of the wages paid to an employee with a developmental disability or a chronically mentally ill employeesevere mental illness.
2. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each employee with a developmental disability or chronically mentally ill employee of the taxpayer twenty-five percent of up to six thousand dollars in wages paid annually by the taxpayer for each employee with a developmental disability or severe mental illness, if the department of human services' vocational rehabilitation division determines the individual has a most significant disability, is eligible for services, and requires customized employment in order to obtain competitive integrated employment.
3. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.
4. The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.
5. A taxpayer shall apply, on a form and in the manner prescribed by the department of human services' vocational rehabilitation division, for a determination of whether an employee meets the requirements under subsection 2. If an employee meets the requirements, a letter of certification containing the names of the taxpayer and the qualifying employee must be issued to the taxpayer. No more than one hundred employees may be certified

as qualifying under this section. Applications must be processed in the order the applications are received.

6. A taxpayer claiming a credit under this section shall include a copy of the certification letter received from the department of human services' vocational rehabilitation division with the taxpayer's return filed under this chapter for each taxable year the credit is claimed.
7. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this section against the individual's state income tax liability under section 57-38-30.3.

<sup>237</sup> **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Income tax credit for employment of individuals with developmental disabilities or severe mental illness under section 57-38-01.16.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for the first two taxable years after December 31, 2018.

Approved April 10, 2019

Filed April 11, 2019

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<sup>237</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 1 of House Bill No. 1053, chapter 490, section 3 of House Bill No. 1174, chapter 486, section 1 of House Bill No. 1276, chapter 488, section 1 of House Bill No. 1475, chapter 489, and section 11 of Senate Bill No. 2036, chapter 54.

## CHAPTER 486

### HOUSE BILL NO. 1174

(Representatives Bellew, Dockter, Martinson, Nathe, Rohr, M. Ruby, Trottier)  
(Senators Dever, Schaible)

AN ACT to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an individual income tax deduction for social security benefits; to amend and reenact subsection 5 of section 57-02-08.1 and section 57-38-01.28 of the North Dakota Century Code, relating to the homestead tax credit and the marriage penalty credit; and to provide an effective date.

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

<sup>238</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. For the purposes of this section:
  - a. "Dependent" has the same meaning it has for federal income tax purposes.
  - b. "Homestead" has the same meaning as provided in section 47-18-01.
  - c. "Income" means income for the most recent complete taxable year from all sources, including the income of any dependent of the applicant, and including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, any amount excluded from income by federal or state law with the exception of income from social security benefits, and medical expenses paid during the year by the applicant or the applicant's dependent which is not compensated by insurance or other means.
  - d. "Medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.
  - e. "Permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months as established by a certificate from a licensed physician or a written determination of disability from the social security administration or any federal or state agency that has authority to certify an individual's disability.

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<sup>238</sup> Section 57-02-08.1 was also amended by section 2 of Senate Bill No. 2278, chapter 474.

**SECTION 2. AMENDMENT.** Section 57-38-01.28 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.28. Marriage penalty credit.**

1. A married couple filing a joint return under section 57-38-30.3 is allowed a credit of not to exceed three hundred dollars per couple as determined under this section. The tax commissioner shall adjust the maximum amount of the credit under this subsection each taxable year at the time and rate adjustments are made to rate schedules under subdivision g of subsection 1 of section 57-38-30.3.
2. The credit under this section is the difference between the tax on the couple's joint North Dakota taxable income under the rates and income levels in subdivision b of subsection 1 of section 57-38-30.3 and the sum of the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the qualified income of the lesser-earning spouse, and the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the couple's joint North Dakota taxable income, minus the qualified income of the lesser-earning spouse.
3. For a nonresident or part-year resident, the credit under this section must be adjusted based on the percentage calculated under subdivision f of subsection 1 of section 57-38-30.3.
4. For purposes of this section:
  - a. "Qualifying income" means the sum of the following, to the extent included in North Dakota taxable income:
    - (1) Earned income as defined in section 32(c)(2) of the Internal Revenue Code;
    - (2) Income received from a retirement pension, profit-sharing, stock bonus, or annuity plan; and
    - (3) Social security benefits as defined in section 86(d)(1) of the Internal Revenue Code to the extent included in North Dakota taxable income.
  - b. "Qualifying income of the lesser-earning spouse" means the qualifying income of the spouse with the lesser amount of qualifying income for the taxable year minus the sum of:
    - (1) The amount for one exemption under section 151(d) of the Internal Revenue Code; and
    - (2) One-half of the amount of the standard deduction under section 63(c)(2)(A)(4) of the Internal Revenue Code.

**239 SECTION 3.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

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<sup>239</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 1 of House Bill No. 1053, chapter 490, section 1 of House Bill No. 1276, chapter 488, section 2 of House Bill No. 1406, chapter 485, section 1 of House Bill No. 1475, chapter 489, and section 11 of Senate Bill No. 2036, chapter 54.

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For taxpayers with federal adjusted gross income of fifty thousand dollars or less, or one hundred thousand dollars or less if married filing jointly, reduced by an amount equal to social security benefits included in a taxpayer's federal adjusted gross income under section 86 of the Internal Revenue Code.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved April 26, 2019

Filed April 29, 2019

## CHAPTER 487

### HOUSE BILL NO. 1040

(Legislative Management)  
(Taxation Committee)

AN ACT to create and enact a new section to chapter 57-38 and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to the provision of an income tax credit for purchases of manufacturing machinery and equipment to automate manufacturing processes; to provide an effective date; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

##### Twenty-first century manufacturing workforce incentive.

1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes in this state to improve job quality or increase productivity. The amount of the credit under this section is twenty percent of the cost of the manufacturing machinery and equipment purchased in the taxable year. Qualified expenditures under this section may not be used in the calculation of any other income tax deduction or credit allowed under this chapter.
2. For purposes of this section:
  - a. "Improved job quality" means a five percent increase in average wages or a five percent improvement in workplace safety as documented through participation in workforce safety and insurance safety incentive programs.
  - b. "Increased productivity" means no less than a five percent increase in output or a five percent increase in the number of units produced per automated line per time period.
  - c. "Manufacturing machinery and equipment for the purpose of automating manufacturing processes" means new or used automation and robotic equipment used to upgrade or advance a manufacturing process. The term does not include replacement automation and robotic equipment that does not upgrade or advance a manufacturing process.
  - d. "Primary sector business" has the meaning provided in section 1-01-49.
  - e. "Purchase" includes manufacturing machinery and equipment acquired under a capital lease only for the taxable year in which the lease is executed. A capital lease is a lease which meets generally accepted accounting principles. The qualifying costs of the equipment acquired



- under a capital lease is the fair market value of the equipment at the inception of the lease.
3. The taxpayer shall claim the total credit amount for the taxable year in which the manufacturing machinery and equipment are purchased. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.
  4. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the next five succeeding taxable years.
  5. The aggregate amount of credits allowed each calendar year under this section may not exceed one million dollars. However, if the maximum amount of allowed credits are not claimed in any calendar year, any remaining unclaimed credits may be carried forward and made available in the next succeeding calendar year. If the aggregate amount of credits claimed under this section exceeds the amount available in a calendar year, the tax commissioner shall prorate the credits among the claimants.
  6. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return.
  7. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.
  8. The department of commerce shall provide the tax commissioner the name, address, and federal identification number or social security number of the taxpayer approved as qualifying for the credit under this section, and a list of those items approved as a qualified expenditure by the department. The taxpayer claiming the credit shall file with the taxpayer's return, on forms prescribed by the tax commissioner, the following information:
    - a. The name, address, and federal identification number or social security number of the taxpayer that made the purchase; and
    - b. An itemization of:
      - (1) Each item of machinery or equipment purchased for automation, including a description of the equipment or system being upgraded or advanced, and an explanation of how the upgrade or advancement will improve job quality or increase productivity;
      - (2) The amount paid for each item of machinery or equipment if the amount paid for the machinery or equipment is being used as a basis for calculating the credit; and

(3) The date on which payment for the purchase was made.

9. Within one year after claiming a tax credit under this section, a taxpayer shall file with the tax commissioner a report that documents the improved job quality or increased productivity required under this section and any other information the tax commissioner determines is necessary for administration of this section. Failure to document the improved job quality or increased productivity requirements is cause to disallow the credit attributable to the noncompliance. The tax commissioner shall provide notice of the disallowed credit to the taxpayer. Within ninety days after the date of the notice, the taxpayer shall file an amended return for each taxable year in which the disallowed credit reduced the taxpayer's tax liability and pay the amount due. If an amended return is not filed timely, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.
10. Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an examination of the credit claimed and assessing additional tax due under section 57-38-38.

<sup>240</sup> **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Twenty-first century manufacturing workforce incentive under section 1 of this Act (effective for the first four taxable years beginning after December 31, 2018).

**SECTION 3. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for the first four taxable years beginning after December 31, 2018, and is ineffective after that date.

Approved April 25, 2019

Filed April 26, 2019

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<sup>240</sup> Section 57-38-30.3 was also amended by section 1 of House Bill No. 1053, chapter 490, section 3 of House Bill No. 1174, chapter 486, section 1 of House Bill No. 1276, chapter 488, section 2 of House Bill No. 1406, chapter 485, section 1 of House Bill No. 1475, chapter 489, and section 11 of Senate Bill No. 2036, chapter 54.

## CHAPTER 488

### HOUSE BILL NO. 1276

(Representatives K. Koppelman, Devlin, Hatlestad, Karls, Louser, Pollert, Satrom, Schauer)  
(Senators Heckaman, Hogan, Kannianen)

AN ACT to amend and reenact subdivision q of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax deduction for a birth resulting in stillbirth; and to provide for retroactive application.

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

<sup>241</sup> **SECTION 1. AMENDMENT.** Subdivision q of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- q. ~~Reduced by an amount equal to the exemption available for a qualifying child under section 152 of the Internal Revenue Code [26 U.S.C. 152], as amended, four thousand one hundred fifty dollars for taxable year 2018, for each birth resulting in stillbirth, as defined in section 23-02.1-01, for which a fetal death certificate has been filed under section 23-02.1-20. For taxable years beginning after December 31, 2018, the deduction amount must be adjusted annually on January first of each year by the cost-of-living adjustment. For purposes of this subdivision, the "cost-of-living adjustment" means the percentage increase in the consumer price index for all urban consumers in the midwest region as determined by the United States department of labor, bureau of labor statistics, for the most recent year ending December thirty-first. The exemption may only be claimed in the taxable year in which the stillbirth occurred.~~

**SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to taxable years beginning after December 31, 2017.

Approved March 8, 2019

Filed March 8, 2019

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<sup>241</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 1 of House Bill No. 1053, chapter 490, section 3 of House Bill No. 1174, chapter 486, section 2 of House Bill No. 1406, chapter 485, section 1 of House Bill No. 1475, chapter 489, and section 11 of Senate Bill No. 2036, chapter 54.

## CHAPTER 489

### HOUSE BILL NO. 1475

(Representatives Mitskog, Boschee, Dockter)  
(Senator Cook)

AN ACT to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax exclusion for employee education assistance provided by an employer; and to provide an effective date.

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

**242 SECTION 1.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of expenses incurred by an employee which are directly related to the attainment of higher education or career and technical education which are reimbursed by the employee's employer, but only to the extent the amount of reimbursement is reported as federal taxable income.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved March 28, 2019

Filed March 29, 2019

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<sup>242</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 1 of House Bill No. 1053, chapter 490, section 3 of House Bill No. 1174, chapter 486, section 1 of House Bill No. 1276, chapter 488, section 2 of House Bill No. 1406, chapter 485, and section 11 of Senate Bill No. 2036, chapter 54.

## CHAPTER 490

### HOUSE BILL NO. 1053

(Representatives Vetter, Kasper, C. Johnson, Schneider, Eidson, Beadle, Blum,  
Johnston, Schauer)  
(Senators Meyer, Sorvaag, Burckhard)

AN ACT to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax deduction for retired military personnel benefits; and to provide an effective date.

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

<sup>243</sup> **SECTION 1.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount received by a taxpayer as retired military personnel benefits, including retired military personnel benefits paid to the surviving spouse of a deceased retired member of the armed forces of the United States, a reserve component of the armed forces of the United States, or the national guard, but only to the extent the amount was included in federal taxable income.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved April 8, 2019

Filed April 9, 2019

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<sup>243</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1040, chapter 487, section 3 of House Bill No. 1174, chapter 486, section 1 of House Bill No. 1276, chapter 488, section 2 of House Bill No. 1406, chapter 485, section 1 of House Bill No. 1475, chapter 489, and section 11 of Senate Bill No. 2036, chapter 54.

## CHAPTER 491

### HOUSE BILL NO. 1111

(Representatives Headland, Dockter, Grueneich)  
(Senators Cook, Wanzek)

AN ACT to amend and reenact section 57-38-30.5 of the North Dakota Century Code, relating to the alternative simplified method for calculating the research and experimental expenditure credit; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-38-30.5. Income tax credit for research and experimental expenditures.**

A taxpayer is allowed a credit against the tax imposed under section 57-38-30 or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
  - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
  - d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.

- e. ~~For~~Except as provided in subsection 4, for the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
  - f. The maximum annual credit a taxpayer may obtain under this subsection is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 78.
2. ~~For~~Except as provided in subsection 4, for taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
    - a. This rate applies through the tenth taxable year beginning after December 31, 2006.
    - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
3. ~~For~~Except as provided in subsection 4, for taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base amount and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base amount.
4. A taxpayer may elect to use the alternative simplified credit under section 41(c)(5) of the Internal Revenue Code [26 U.S.C. 41(c)] the amount of the credit under this subsection is:
    - a. Seventeen and one-half percent of the first one hundred thousand dollars of the alternative excess research and development for the taxable year plus five and six-tenths percent of the alternative excess research and development for the taxable year in excess of one hundred thousand dollars.

- b. If a taxpayer has zero qualified research expenses in any one of the three taxable years preceding the taxable year for which the credit is determined, the amount of qualified research expenses for the taxable year multiplied by seven and one-half percent of the first one hundred thousand dollars plus two and four-tenths percent of qualified research expenses for the taxable year more than one hundred thousand dollars.
5. For purposes of this section:
- a. "Alternative excess research and development" means the amount of qualified research expenses which exceeds fifty percent of the average qualified research expenses for the three taxable years preceding the taxable year for which the credit is being determined.
- b. "Alternative simplified credit" means the computation set forth in section 41(c)(5) of the Internal Revenue Code [26 U.S.C. 41(c)(5)], except the term does not include qualified research expenses incurred outside the state of North Dakota.
- c. "Base amount" means base amount as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
- b.d. "Director" means the director of the department of commerce division of economic development and finance.
- e.e. "Primary sector business" has the meaning provided in section 1-01-49.
- d.f. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
- e.g. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
- f.h. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
- 5-6. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
- 6-7. In the case of a taxpayer that is a partner, shareholder, or a member in a passthrough entity, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
- 7-8. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 56, the excess may be used as a research credit carryback to



each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year. A claim to carry back the credit under this section must be filed within three years of the due date or extended due date of the return for the taxable year in which the credit was earned.

8-9. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 45. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:

- a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
- b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.
- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
- e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax

commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.

- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.

9-10. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

40-11. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 89.

44-12. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section 57-38-30.3.

42-13. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.

43-14. For any taxable year in which the federal research tax credit provisions of section 41 of the Internal Revenue Code are ineffective, the provisions of section 41 of the Internal Revenue Code [26 U.S.C. 41] referenced in this section have the same meaning and application as provided in section 41 of the Internal Revenue Code, as amended through the most recent taxable year in which the provisions were in effect.

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15. If a taxpayer claims a credit under this section on the taxpayer's original return, the taxpayer's election to calculate the credit under subsection 1, 2, 3, or 4 is binding for the taxable year in which the election is made. A taxpayer claiming a credit for tax years beginning before January 1, 2019, may not file an amended return for the purpose of calculating the credit under subsection 4.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 492

### HOUSE BILL NO. 1248

(Representatives Hanson, Dockter, Eidson, Trottier)  
(Senators Dever, Dotzenrod)

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 veterans' postwar trust fund; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

##### **Optional contributions to veterans' postwar trust fund.**

An individual may designate on the tax return of that individual a contribution to the veterans' postwar trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that otherwise would 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 veterans' postwar trust fund.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 493

### HOUSE BILL NO. 1112

(Representatives Headland, Dockter)  
(Senator Cook)

AN ACT to create and enact a new subsection to section 57-38-60 of the North Dakota Century Code, relating to filing information returns; to amend and reenact subsection 11 of section 57-38-60 of the North Dakota Century Code, relating to filing quarterly withholding returns; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 11 of section 57-38-60 of the North Dakota Century Code is amended and reenacted as follows:

11. A payroll service provider authorized under the provisions of this chapter to file and remit withholding taxes on behalf of an employer shall file the ~~returns~~return required by ~~subsections~~subsection 2, 3, and 4, and pay any tax due, by electronic data interchange or other electronic media as determined by the tax commissioner. As used in this subsection, a "payroll service provider" means a person that, for federal tax purposes, electronically processes and transmits an employer's withholding returns and taxes, including wage information returns. The tax commissioner may waive, upon a showing of good cause, the requirement to file a return or pay the tax electronically.

**SECTION 2.** A new subsection to section 57-38-60 of the North Dakota Century Code is created and enacted as follows:

Any person required to file ten or more information returns under subsection 3 of section 57-38-42, or subsection 3 or 4 of this section, shall file the returns by electronic data interchange or other electronic media as determined by the tax commissioner. The tax commissioner may waive, upon a showing of good cause, the requirement to file the returns electronically.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved March 6, 2019

Filed March 6, 2019

## CHAPTER 494

### HOUSE BILL NO. 1083

(Finance and Taxation Committee)  
(At the request of the North Dakota University System)

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 of the North Dakota Century Code, relating to setoff of income tax refund for debts owed to the state; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-38.3-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, workforce safety and insurance, state institutions of higher education, the North Dakota student loan service center, the insurance commissioner, the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, a housing authority created under section 23-11-02, or the state court administrator on behalf of the state courts for purposes of court-ordered fines, fees, or costs due the state. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 495

### SENATE BILL NO. 2165

(Senators Vedaa, Clemens, Kreun)  
(Representatives D. Anderson, M. Ruby, Vetter)

AN ACT to amend and reenact subdivision d of subsection 12 of section 57-39.2-01 of the North Dakota Century Code, relating to the definition of gross receipts.

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

<sup>244</sup> **SECTION 1. AMENDMENT.** Subdivision d of subsection 12 of section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

d. "Gross receipts" does not include:

- (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
- (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar documents given to the purchaser; and
- (4) The sale price of property returned by a customer when the full sale price is refunded either in cash or credit. When tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to tax imposed by chapter 57-39.5 or 57-40.3 or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not included in gross receipts of the retailer; and
- (5) The amount of compensation received from an insurance company for the loss of a stolen or totally destroyed watercraft that has been previously taxed under this chapter or chapter 57-40.2, if that compensation is used as a trade-in on the purchase of a replacement watercraft. The trade-in credit is not included in the gross receipts of the retailer.
  - (a) If a watercraft is purchased by an owner who has had a watercraft stolen or totally destroyed, a trade-in credit must be allowed against one or more replacement watercraft purchases in a

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<sup>244</sup> Section 57-39.2-01 was also amended by section 2 of Senate Bill No. 2192, chapter 95, section 4 of Senate Bill No. 2193, chapter 341, and section 1 of Senate Bill No. 2338, chapter 496.

cumulative amount not to exceed the total amount of compensation from the insurance company for the loss.

- (b) The purchaser of a replacement watercraft shall provide the seller with an original notarized statement from the insurance company verifying the original watercraft was a total loss and indicating the date and amount of compensation.
- (c) If the full amount of trade-in credit under this section has not been used, the seller shall record on the face of the notarized statement the necessary information to identify partial use of the credit, retain a copy of the notarized statement to verify the credit allowed, and return the original notarized statement to the purchaser. If the full amount of the credit has been used, the seller shall retain the original notarized statement to verify the amount of trade-in credit allowed.
- (d) Trade-in credit for a watercraft stolen or totally destroyed may be applied to purchases of replacement watercraft made within three years from the date of compensation by the insurance company.

Approved March 28, 2019

Filed March 29, 2019



## CHAPTER 496

### SENATE BILL NO. 2338

(Senator Cook)  
(Representative Dockter)

AN ACT to create and enact sections 57-39.2-02.3 and 57-40.2-02.4 of the North Dakota Century Code, relating to collection of sales and use tax by marketplace facilitators; to amend and reenact subsection 22 of section 57-39.2-01, and subsections 6 and 7 of section 57-40.2-01 of the North Dakota Century Code, relating to the definition of retailer and retail sale; and to provide an effective date.

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

<sup>245</sup> **SECTION 1. AMENDMENT.** Subsection 22 of section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, excluding internet access service, or tickets or admissions to places of amusement, entertainment, and athletic events, or magazines or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. ~~A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.~~

**SECTION 2.** Section 57-39.2-02.3 of the North Dakota Century Code is created and enacted as follows:

#### **57-39.2-02.3. Marketplace facilitator tax collection requirement.**

1. For the purposes of this section:

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<sup>245</sup> Section 57-39.2-01 was also amended by section 1 of Senate Bill No. 2165, chapter 495, section 2 of Senate Bill No. 2192, chapter 95, and section 4 of Senate Bill No. 2193, chapter 341.

- a. "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales tax or use tax. The term includes a resale certificate or other documentation authorized in section 57-39.2-10 furnished by a buyer to a seller.
- b. "Marketplace" means a physical or electronic place where one or more marketplace sellers sell or offer for sale tangible personal property or other products or services subject to tax under section 57-39.2-02.1, regardless of whether the marketplace seller has a physical presence in this state. A physical or electronic place includes a store, booth, internet website, catalog, television, radio broadcast, or a dedicated sales software application.
- c. (1) "Marketplace facilitator" means a person that:
- (a) Contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a physical or electronic marketplace operated by the person;
  - (b) Engages directly or indirectly, through one or more affiliated persons, in any of the following:
    - [1] Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
    - [2] Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;
    - [3] Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or
    - [4] Software development or research and development activities related to any of the activities described in subparagraph a, if such activities are directly related to a physical presence or electronic marketplace operated by the person or an affiliated person; and
  - (c) Engages in any of the following activities with respect to the seller's products:
    - [1] Payment processing services;
    - [2] Fulfillment or storage services;
    - [3] Listing products for sale;
    - [4] Setting prices;
    - [5] Branding sales as those of the marketplace facilitator;
    - [6] Order taking;
    - [7] Advertising or promotion; or

- [8] Providing customer service or accepting or assisting with returns or exchanges.
- (2) The term does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle transactions between two parties.
- d. "Marketplace seller" means a retailer that sells or offers for sale tangible personal property or other products or services subject to tax under section 57-39.2-02.1, through a marketplace that is owned, operated, or controlled by a marketplace facilitator.
2. Notwithstanding any other provision of law, any marketplace facilitator facilitating sales of tangible personal property or other products or services subject to tax under section 57-39.2-02.1, which does not have a physical presence in this state, is a retailer subject to chapters 57-39.2 and 57-40.2 and shall remit sales or use tax if the marketplace facilitator facilitates or makes sales through the marketplace that, when the sales are combined, meet the threshold amount in section 57-39.2-02.2. A marketplace facilitator exceeding the sales threshold shall obtain a permit under section 57-39.2-14, and begin collecting the tax on sales during the following calendar year or beginning sixty days after the threshold is met, whichever is earlier.
3. A marketplace facilitator shall be considered the retailer of each sale the facilitator facilitates on its forum for a marketplace seller. Each marketplace facilitator shall:
- a. Be required to collect and remit for each sale any tax imposed under chapters 57-39.2 and 57-40.2.
- b. Be responsible for all obligations imposed under chapter 57-39.2 as if the marketplace facilitator was the retailer of the sale.
- c. In accordance with the provisions of section 57-39.2-10, keep such records and information as may be required by the tax commissioner to ensure proper collection and remittance of tax.
- d. Certify to its marketplace sellers that it will collect and remit state and local sales and use tax on sales of tangible personal property or other products or services subject to tax under section 57-39.2-02.1 made through the marketplace. A marketplace seller that accepts a marketplace facilitator's collection certificate in good faith may exclude sales made through the marketplace from the marketplace seller's return of gross receipts under section 57-39.2-11.
- e. Be subject to audit by the tax commissioner with respect to all retail sales for which it is required to collect and pay the tax imposed under chapters 57-39.2 and 57-40.2. If the tax commissioner audits the marketplace facilitator, the tax commissioner is prohibited from auditing the marketplace seller for the same retail sales unless the marketplace facilitator seeks relief under subsection 4.

4. A marketplace facilitator is not liable under this section for failure to collect and remit sales and use tax if the marketplace facilitator demonstrates to the satisfaction of the department that:
  - a. The marketplace facilitator has a system in place to require the seller to provide accurate information and has made a reasonable effort to obtain accurate information from the seller about a retail transaction;
  - b. The failure to collect and remit the correct tax was due to reliance upon incorrect or insufficient information provided to the marketplace facilitator by the seller. If the marketplace facilitator is relieved of liability under this subsection, the seller and the purchaser are liable for any amount of uncollected, unpaid, or unremitted tax; and
  - c. The marketplace facilitator and marketplace seller are not affiliated. A marketplace facilitator and a marketplace seller are affiliated if:
    - (1) Either owns more than five percent of the other; or
    - (2) Both are subject to the control of a common entity that owns more than five percent of each.
5. Notwithstanding any other provision of law, the tax imposed under this section may be refunded under the following conditions:
  - a. A person qualifying for an exemption under subsection 5, 6, 24, 32, 43, 48, or 52 of section 57-39.2-04 may apply in writing to the tax commissioner on a form and in the manner as the tax commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale.
  - b. The refund is five dollars or more. Qualifying sales may be accumulated for periods not in excess of one calendar year in order to reach the five dollar limit.
6. A class action may not be brought against a marketplace facilitator on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator, regardless of whether such action is characterized as a tax refund claim.
7. No marketplace facilitator is required to collect or remit sales or use tax under this section on any sale made before October 1, 2019.

**SECTION 3. AMENDMENT.** Subsections 6 and 7 of section 57-40.2-01 of the North Dakota Century Code are amended and reenacted as follows:

6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this

chapter. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.

7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.

**SECTION 4.** Section 57-40.2-02.4 of the North Dakota Century Code is created and enacted as follows:

**57-40.2-02.4. Marketplace facilitator tax collection requirement.**

1. For the purposes of this section:

- a. "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales or use tax. The term includes a resale certificate or other documentation authorized in section 57-40.2-04 furnished by a buyer to a seller.
- b. "Marketplace" means a physical or electronic place where one or more marketplace sellers sell or offer for sale tangible personal property or other products or services subject to tax under section 57-40.2-02.1, regardless of whether the marketplace seller has a physical presence in this state. A physical or electronic place includes a store, booth, internet website, catalog, television, radio broadcast, or a dedicated sales software application.
- c. (1) "Marketplace facilitator" means a person that:
- (a) Contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a physical or electronic marketplace operated by the person;
- (b) Engages directly or indirectly, through one or more affiliated persons, in any of the following:
- [1] Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
- [2] Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;



- a. Be required to collect and remit for each sale any tax imposed under chapters 57-39.2 and 57-40.2.
  - b. Be responsible for all obligations imposed under chapter 57-40.2 as if the marketplace facilitator was the retailer of the sale.
  - c. In accordance with the provisions of section 57-40.2-09, keep such records and information as may be required by the tax commissioner to ensure proper collection and remittance of tax.
  - d. Certify to its marketplace sellers that it will collect and remit state and local sales and use tax on sales of tangible personal property or other products or services subject to tax under section 57-40.2-02.1 made through the marketplace. A marketplace seller that accepts a marketplace facilitator's collection certificate in good faith may exclude sales made through the marketplace from the marketplace seller's return of gross receipts under section 57-39.2-11.
  - e. Be subject to audit by the tax commissioner with respect to all retail sales for which it is required to collect and pay the tax imposed under chapters 57-39.2 and 57-40.2. Where the tax commissioner audits the marketplace facilitator, the tax commissioner is prohibited from auditing the marketplace seller for the same retail sales unless the marketplace facilitator seeks relief under subsection 4.
4. A marketplace facilitator is not liable under this section for failure to collect and remit sales and use tax if the marketplace facilitator demonstrates to the satisfaction of the department that:
- a. The marketplace facilitator has a system in place to require the seller to provide accurate information and has made a reasonable effort to obtain accurate information from the seller about a retail transaction;
  - b. The failure to collect and remit the correct tax was due to reliance upon incorrect or insufficient information provided to the marketplace facilitator by the seller. If the marketplace facilitator is relieved of liability under this subsection, the seller and the purchaser are liable for any amount of uncollected, unpaid, or unremitted tax; and
  - c. The marketplace facilitator and marketplace seller are not affiliated. A marketplace facilitator and a marketplace seller are affiliated if:
    - (1) Either owns more than five percent of the other; or
    - (2) Both are subject to the control of a common entity that owns more than five percent of each.
5. Notwithstanding any other provision of law, the tax imposed under this section may be refunded under the following conditions:
- a. An entity qualifying for an exemption under subsection 5, 6, 24, 32, 43, 48, or 52 of section 57-39.2-04 may apply in writing to the tax commissioner on a form and in the manner as the tax commissioner may prescribe, reciting sufficient facts establishing the exempt status of the sale.

- b. The refund is five dollars or more. Qualifying sales may be accumulated for periods not in excess of one calendar year in order to reach the five dollar limit.
- 6. A class action may not be brought against a marketplace facilitator on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator, regardless of whether such action is characterized as a tax refund claim.
- 7. No marketplace facilitator is required to collect or remit sales or use tax under this section on any sale made before October 1, 2019.

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable events occurring after July 1, 2019.

Approved March 26, 2019

Filed March 27, 2019



## CHAPTER 497

### SENATE BILL NO. 2191

(Senators Cook, Bekkedahl)  
(Representatives Dockter, Hatlestad)

AN ACT to amend and reenact sections 57-39.2-02.2 and 57-40.2-02.3 of the North Dakota Century Code, relating to the application of sales and use tax to certain sellers located outside this state; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-39.2-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-02.2. Certain sellers located outside this state required to collect and remit sales taxes - Criteria.**

Notwithstanding any other provision of law, any seller of tangible personal property or other taxable product for delivery in this state, which does not have a physical presence in this state, is subject to this chapter and chapter 57-40.2 and shall remit sales or use tax if the seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars in the previous calendar year, or the current calendar year. A seller that exceeds this sales threshold shall obtain a permit under section 57-39.2-14, and begin collecting the tax on sales delivered during the following calendar year or beginning sixty days after the threshold is met, whichever is earlier. The seller shall follow all applicable procedures and requirements of law as if the seller has a physical presence in this state, if the seller meets either of the following criteria in the previous calendar year or the current calendar year:

1. ~~The seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars; or~~
2. ~~The seller sold tangible personal property and other taxable items for delivery in this state in two hundred or more separate transactions.~~

**SECTION 2. AMENDMENT.** Section 57-40.2-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-02.3. Certain sellers located outside this state required to collect and remit sales taxes - Criteria.**

Notwithstanding any other provision of law, any seller of tangible personal property or other taxable product for delivery in this state, which does not have a physical presence in this state, is subject to this chapter and chapter 57-39.2 and shall remit sales or use tax if the seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars in the previous calendar year, or the current calendar year. A seller that exceeds this sales threshold shall obtain a permit under section 57-39.2-14, and begin collecting the tax on sales delivered during the following calendar year or beginning sixty days after the threshold is met, whichever is earlier. The seller shall

follow all applicable procedures and requirements of law as if the seller had a physical presence in this state, if the seller meets either of the following criteria in the previous calendar year or the current calendar year:

1. ~~The seller's gross sales from the sale of tangible personal property and other taxable items delivered in this state exceed one hundred thousand dollars; or~~
2. ~~The seller sold tangible personal property and other taxable items for delivery in this state in two hundred or more separate transactions.~~

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2018.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 498

### HOUSE BILL NO. 1205

(Representatives Dockter, Headland, Howe, Porter)  
(Senator Cook)

AN ACT to create and enact a new section to chapter 57-39.2 and a new subdivision to subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code, relating to a sales tax exemption for materials used to construct a straddle plant, a fractionator, or qualified associated infrastructure; to amend and reenact subsection 2 of section 57-39.2-04.15 of the North Dakota Century Code, relating to a sales and use tax exemption for materials used to construct a fertilizer or chemical processing facility; 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 2 of section 57-39.2-04.15 of the North Dakota Century Code is amended and reenacted as follows:

2. On or before June 30, ~~2019~~2023, the owner of the fertilizer or chemical processing plant must receive from the state department of health ~~an environmental quality~~ an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section.

**SECTION 2. AMENDMENT.** Subsection 2 of section 57-39.2-04.15 of the North Dakota Century Code is amended and reenacted as follows:

2. On or before June 30, ~~2019~~2023, the owner of the fertilizer or chemical processing plant must receive from the state department of health an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section.

**SECTION 3.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

**Sales tax exemption for materials used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure.**

1. Gross receipts from sales of tangible personal property used to construct or expand a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure in this state are exempt from the tax imposed under this chapter. To qualify for the exemption, the tangible personal property must be incorporated into a qualifying straddle plant or a qualifying fractionator plant, or used in the construction process to the point of having no residual economic value. Replacement of tangible personal property does not qualify

for the exemption under this section unless the replacement creates an expansion of the plant or qualified associated infrastructure.

2. To receive the exemption at the time of purchase, the owner of the plant or qualified associated infrastructure must receive from the tax commissioner a certificate that the tangible personal property used to construct the plant qualifies for the exemption. If a certificate is not received prior to the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner may apply for a refund of the difference between the amount remitted by the contractor and the exemption allowed by this section. Application for a refund must be made at the time and in the manner directed by the tax commissioner, and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
4. For purposes of this section:
  - a. "Deep cut fractionator" means a plant that processes a mixed natural gas liquids stream into purity natural gas liquids, including ethane, propane, butane, and C-five plus.
  - b. "Expansion" means an increase in production volume, employment, or the type of products produced.
  - c. "Qualified associated infrastructure" means:
    - (1) Natural gas liquid pipelines built to supply mixed natural gas liquids to the qualified fractionator;
    - (2) Storage facilities for mixed natural gas liquids that will be processed by the qualified fractionator;
    - (3) Storage facilities for purity natural gas liquids, including ethane, propane, butane, and C-five plus, that are produced by the qualified fractionator;
    - (4) Disposal facilities built for the qualified fractionator and for onsite purchasers of the fractionator's processed end-product;
    - (5) Rail upgrades required for the qualified fractionator and onsite purchasers to access rail transportation; and
    - (6) Roads developed for the qualified fractionator, storage facilities, and onsite customers.
  - d. "Qualified fractionator" means a deep cut fractionator located in this state with a daily design capacity of at least forty-five thousand barrels of ethane, fifteen thousand barrels of propane, thirteen thousand barrels of butane, and three thousand barrels of C-five plus.

- e. "Qualified straddle plant" means a straddle plant located in this state that is either connected to a qualified fractionator or produces Y-grade liquids that are dedicated for use by a qualified fractionator.
- f. "Straddle plant" means a gas processing plant located on or near a gas transmission line, which removes residual natural gas liquids from the gas stream and returns the residue gas to the transmission line.

**SECTION 4.** A new subdivision to subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code is created and enacted as follows:

Tangible personal property used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure as authorized or approved for exemption by the tax commissioner under section 2 of this Act.

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable periods beginning after June 30, 2019.

**SECTION 6. EFFECTIVE DATE - EXPIRATION DATE.** If, by July 1, 2019, the legislative council has not received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality, section 2 of this Act becomes effective on July 1, 2019, and remains in effect until the date certification is received, after which section 2 of this Act is ineffective. If the certification is received before July 1, 2019, section 2 of this Act does not become effective.

Section 1 of this Act become effective on July 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by July 1, 2019, section 1 of this Act becomes effective on the date certification is received.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 499

### HOUSE BILL NO. 1214

(Representatives Dockter, Hatlestad, Headland)  
(Senators Bekkedahl, Cook)

AN ACT to amend and reenact section 57-39.4-31 of the North Dakota Century Code, relating to membership of the streamlined sales tax governing board.

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

**SECTION 1. AMENDMENT.** Section 57-39.4-31 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-39.4-31. Membership of streamlined sales tax governing board.**

~~1. Two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative management, shall represent this state on the~~The streamlined sales tax governing board consists of:

1. The tax commissioner or the commissioner's designee;
  2. One member appointed by the majority leader of the senate; and
  3. One member appointed by the majority leader of the house of representatives.
- ~~2. 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 multistate discussions to review or revise the agreement or to conduct such other business as comes before the board.~~

Approved March 6, 2019

Filed March 6, 2019

## CHAPTER 500

### SENATE BILL NO. 2258

(Senators Cook, Heckaman, Wardner)  
(Representatives Boschee, Headland, Pollert)

AN ACT to create and enact chapter 57-39.9 of the North Dakota Century Code, relating to state-tribal agreements for the administration and collection of sales, use, and gross receipts taxes within the boundaries of the Fort Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain Reservation; to repeal chapter 57-39.8 of the North Dakota Century Code, relating to a state-tribal agreement with the Standing Rock Sioux Tribe; to provide a continuing appropriation; to provide for application; and to declare an emergency.

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

**SECTION 1.** Chapter 57-39.9 of the North Dakota Century Code is created and enacted as follows:

##### **57-39.9-01. Authority to enter state-tribal sales, use, and gross receipts tax agreements.**

The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Spirit Lake Tribe, Standing Rock Sioux Tribe, and Turtle Mountain Band of Chippewa Indians, which comply with this chapter relating to the collection, administration, enforcement, and allocation of state sales, use, and gross receipts taxes imposed and collected within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced. An agreement under this chapter must include the sales tax, use tax, farm machinery gross receipts tax, and the alcoholic beverages gross receipts tax.

##### **57-39.9-02. Agreement requirements.**

The governor may enter an agreement with a tribe or tribes if the agreement complies with this section.

1. The taxes subject to an agreement under this chapter are the state's sales, use, and gross receipts taxes under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, as may be amended subsequently by the legislative assembly, for taxable transactions and activities occurring exclusively within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.

2. Except as otherwise provided in this chapter, the state's sales, gross receipts, and use taxes under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, must apply to all transactions and activities by all persons and entities occurring within the boundaries of the reservation.
3. A tribe or tribes shall impose taxes equal to the state's taxes which conform in all respects with regard to the taxable or exempt status of transactions and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, but must be applied only to those taxable transactions and activities occurring within the exterior boundaries of a reservation which are exempt from state taxes because the transactions or activities occur within the tribe's or tribes' jurisdiction.
4. Chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, and title 81 of the North Dakota Administrative Code govern the administration of the taxes subject to an agreement under this chapter.
5. Except as provided in subsection 6, tribally owned and tribal member-owned business entities operating within the boundaries of a reservation are subject to the state's tax or taxes contained in the agreement.
6. Any tax subject to an agreement may not be imposed on a tribally owned entity that solely performs a governmental function or provides essential government services that directly impact the health, welfare, or safety of the tribe and its members, if the tribal entity is identified as such in the agreement. Any other tribally owned business enterprise whose moneys are used, in whole or in part, to fund governmental functions or services, is not subject to the exemption provided under this subsection.
7. The governor and the tribe or tribes must agree the tribe or tribes may not impose any direct or indirect tribal tax or fee on retailers, transactions, or activities subject to the tax agreement. This subsection does not apply to tribal employment rights office fees.
8. The tax commissioner retains authority to collect, administer, and enforce the taxes as provided in chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the reservation under an agreement.
9. Any controversy or claim between the tribe or tribes and the state, arising out of or relating to an agreement under this chapter, is subject to binding arbitration in accordance with the processes and procedures provided in the agreement between the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to impose a tax are expressly excluded from the scope of the arbitration.
10. The amount of state sales, use, and farm machinery gross receipts tax revenue allocated to a tribe or tribes under an agreement must be calculated as follows:
  - a. Fifty percent of the taxes collected from retailers within the exterior boundaries of the reservation. The state shall receive the remainder.



- b. An amount of estimated use taxes paid or collected from enrolled tribal members residing within the exterior boundaries of the reservation determined by multiplying the enrolled membership of the tribe by the estimated per capita use tax. The estimated per capita use tax is ten percent of the per capita sales tax burden. The per capita sales tax burden is determined by multiplying the state tax rate factor by one third of the sales tax burden reported by the most recent "Tax Rates and Tax Burdens in the District of Columbia - A Nationwide Comparison", published by the government of the District of Columbia office of revenue analysis, for a family of three living in the largest city in North Dakota, and earning fifty thousand dollars per year. The state tax rate factor is a fraction representing the state general sales tax rate as a share of the combined state and local sales tax rate for the North Dakota city referenced in this subdivision.
  - c. Except as provided in subdivision d, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.
  - d. The tribe or tribes shall provide the initial population required by subdivision c no less than sixty days before the effective date of the agreement.
  - e. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.
11. The amount of alcoholic beverages gross receipts tax allocated to the tribe under an agreement must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcohol revenue per capita.
- a. The state alcohol revenue per capita is the monthly collections of the state's alcoholic beverages gross receipts tax designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.
  - b. The enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased.

- c. The tribe or tribes shall provide the initial population required by this subsection no less than sixty days before the effective date of the agreement.
  - d. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.
- 12. An agreement under this chapter must give the tax commissioner, after consulting with the governor, and a tribe or tribes the authority to terminate an agreement with or without cause.
- 13. An agreement under this chapter must include:
  - a. A statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering an agreement, except as specifically set forth in the agreement;
  - b. A statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established by the agreement;
  - c. A statement that the state and the tribal government shall cooperate to collect only one tax and share or refund the revenue as specified in the agreement;
  - d. A statement recognizing the sovereign rights of the state and the tribe or tribes; and
  - e. A statement that:
    - (1) The rights of each party must be determined by the terms of the agreement with respect to the taxes subject to the agreement;
    - (2) Neither party may seek additional entitlement or seek to deny entitlement on any federal ground, including federal pre-emption, whether statutorily provided for or otherwise with respect to the taxes that are the subject of an agreement; and
    - (3) Both parties shall defend the agreement from attack by third parties.
- 14. a. Notwithstanding any other provision of state law, the agreement must contain provisions in which:
  - (1) Except as otherwise provided by law, the tax commissioner shall maintain the confidentiality of tax information relating to and gathered under the terms of an agreement as provided in section 57-39.2-23;
  - (2) The tribe or tribes may receive a list of retailers located within the boundaries of the reservation and the amount of tax collected from each retailer during a reporting period; and
  - (3) The tribe or tribes agree to protect the confidentiality of tax information received from the tax commissioner.

- b. The agreement must specify the processes or procedures necessary to safeguard the confidential nature of the tax information.
15. The administration, collection, and enforcement of the taxes under an agreement may begin no sooner than the first day of a calendar quarter which is at least ninety days after the agreement is signed by the parties.
16. Taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation under an agreement entered under this chapter.

**57-39.9-03. Inapplicability of chapter 54-40.2.**

Chapter 54-40.2 does not apply to an agreement entered under this chapter.

**57-39.9-04. Revenue allocation and distribution - Refunds - Continuing appropriation.**

The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 10 of section 57-39.9-02. Tax revenues collected under this chapter are not subject to section 57-39.2-26.1, and are provided as a standing and continuing appropriation to the state treasurer for distribution on a monthly basis.

**57-39.9-05. Refunds - Continuing appropriation.**

1. Refunds of the tax imposed under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, which are subject to an agreement under this chapter, must be paid from the state general fund, and are provided to the state treasurer as a standing and continuing appropriation.
2. Refunds of taxes paid under this section must be reimbursed to the state general fund, with interest at the rate prescribed in section 57-39.2-25, from the first available moneys deposited in the tribal allocation fund.
3. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund is attributable. The refund, including interest, must be reimbursed from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund is attributable.

<sup>246</sup> **SECTION 2. REPEAL.** Chapter 57-39.8 of the North Dakota Century Code is repealed.

**SECTION 3. APPLICATION.** Section 1 of this Act applies to agreements entered after the effective date of this Act.

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

Approved April 23, 2019

Filed April 24, 2019

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<sup>246</sup> Chapter 57-39.8 was also repealed by section 2 of Senate Bill No. 2257, chapter 501.

## CHAPTER 501

### SENATE BILL NO. 2257

(Senators Cook, Heckaman, Wardner)  
(Representatives Boschee, Headland, Pollert)

AN ACT to create and enact chapter 57-39.10 of the North Dakota Century Code, relating to state-tribal agreements for the administration and collection of the alcoholic beverage wholesale tax, tobacco products wholesale tax, and alcoholic beverages gross receipts tax within the exterior boundaries of the Fort Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock Reservation, or Turtle Mountain Reservation; to repeal chapter 57-39.8 of the North Dakota Century Code, relating to a state-tribal agreement with the Standing Rock Sioux Tribe; to provide a continuing appropriation; to provide for application; and to declare an emergency.

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

**SECTION 1.** Chapter 57-39.10 of the North Dakota Century Code is created and enacted as follows:

**57-39.10-01. Authority to enter state-tribal alcoholic beverages wholesale tax, tobacco products wholesale tax, and alcoholic beverages gross receipts tax agreements.**

1. The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle Mountain Band of Chippewa Indians. Each agreement must comply with this chapter relating to the collection, administration, enforcement, and allocation of the state alcoholic beverages wholesale taxes under chapters 5-01, 5-02, and 5-03 for sales of alcoholic beverages, including beer, wine, sparkling wine, and distilled spirits, for delivery to licensed retailers or sale directly to consumers located within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced.
2. The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle Mountain Band of Chippewa Indians. Each agreement must comply with this chapter relating to the collection, administration, enforcement, and allocation of the state tobacco products wholesale taxes under chapter 57-36 for tobacco products sold by licensed wholesalers for delivery to licensed retailers or sold by licensed retailers directly to consumers within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of

the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced.

3. The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle Mountain Band of Chippewa Indians. Each agreement must comply with this chapter relating to the collection, administration, enforcement, and allocation of the state alcoholic beverages gross receipts tax under chapter 57-39.6, imposed and collected within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced.
4. An agreement under this chapter must include the alcoholic beverages wholesale tax, tobacco products wholesale tax, and the alcoholic beverages gross receipts tax.

#### **57-39.10-02. Requirements for all state-tribal tax agreements.**

Any agreement entered under this chapter must comply with this section.

1. The agreement must include:
  - a. A statement that the parties to the agreement are not forfeiting any legal rights to apply each party's respective taxes by entering an agreement, except as specifically set forth in the agreement;
  - b. A statement recognizing the sovereign rights of the state and the tribe or tribes; and
  - c. A statement that:
    - (1) The rights of each party must be determined by the terms of the agreement with respect to the taxes subject to the agreement;
    - (2) Neither party may seek additional entitlement or seek to deny entitlement on any federal ground, including federal pre-emption, whether statutorily provided for or otherwise with respect to the taxes that are the subject of an agreement;
    - (3) Both parties shall defend the agreement from attack by third parties;
    - (4) A taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established by the agreement; and
    - (5) The state and tribal government shall cooperate to collect only one tax and share or refund the revenue as specified in the agreement.

2. Any tribally owned entity or other entity owned in whole or part by a tribal member, whether chartered under state law or tribal law, and operating within the exterior boundaries of a reservation, is subject to the state's tax or taxes and regulatory requirements of the tax subject to an agreement.
3. The tax commissioner retains authority to collect, administer, and enforce the taxes subject to an agreement under this chapter, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the exterior boundaries of a reservation in this state in the manner provided by the applicable state laws.
4. Any controversy or claim between the tribe or tribes and the state, arising out of or relating to an agreement under this chapter, is subject to binding arbitration in accordance with the processes and procedures provided in the agreement between the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to impose a tax are expressly excluded from the scope of the arbitration.
5. An agreement under this chapter must give the tax commissioner, after consulting with the governor, and a tribe or tribes the authority to terminate an agreement with or without cause.
6. An agreement may begin no sooner than the first day of a calendar quarter which is at least ninety days after the agreement is signed by both parties. The tribe or tribes and the state must provide the initial population required by sections 57-39.10-03 and 57-39.10-04 no fewer than sixty days before the effective date of the agreement.

### **57-39.10-03. Alcoholic beverages wholesale tax agreement requirements.**

The governor may enter an alcoholic beverages wholesale tax agreement with a tribe or tribes if the agreement complies with section 57-39.10-02 and this section.

1. The taxes subject to an agreement under this section are the state's alcoholic beverages wholesale taxes under chapters 5-01, 5-02, and 5-03, as may be amended subsequently by the legislative assembly, for alcoholic beverages sold by licensed wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers, for delivery to licensed retailers or sale directly to consumers located within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
2. A tribe or tribes shall impose taxes equal to the state's alcoholic beverages wholesale taxes on all sales of alcoholic beverages sold by licensed wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers, for delivery to all persons within the exterior boundaries of the reservation in this state.
3. Chapters 5-01, 5-02, and 5-03, and title 81 of the North Dakota Administrative Code govern the collection and administration of the taxes subject to an agreement under this section.
4. The amount of tax revenue allocated to the tribe pursuant to an agreement under this section must be equal to an amount determined by multiplying the

enrolled membership of the tribe by the state alcohol revenue per capita. The state alcohol revenue per capita is the quarterly collections of the state's alcoholic beverages wholesale taxes designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.

5. Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

#### **57-39.10-04. Tobacco products wholesale tax agreement requirements.**

The governor may enter a tobacco products wholesale tax agreement with a tribe or tribes if the agreement complies with section 57-39.10-02 and this section.

1. The taxes subject to an agreement under this section are the state's tobacco products wholesale taxes under chapter 57-36, as may be amended subsequently by the legislative assembly, for tobacco products sold by licensed wholesalers for delivery to licensed retailers or sold by licensed retailers directly to consumers within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
2. A tribe or tribes shall impose taxes equal to the state's tobacco products wholesale taxes on all tobacco products sold by licensed wholesalers for delivery to licensed retailers or sold by licensed retailers directly to customers within the exterior boundaries of the reservation in this state.
3. Chapters 57-36 and title 81 of the North Dakota Administrative Code govern the administration of the taxes subject to an agreement under this section.
4. The amount of tax revenue allocated to the tribe pursuant to an agreement under this section must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state tobacco revenue per capita. The state tobacco revenue per capita is the quarterly collections of the state's tobacco products wholesale taxes designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.
5. Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically

residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

**57-39.10-05. Alcoholic beverages gross receipts tax agreement requirements.**

The governor may enter an alcoholic beverages gross receipts tax agreement with a tribe or tribes if the agreement complies with the requirements of section 57-39.10-02 and this section.

1. The taxes subject to an agreement under this chapter are the state's alcoholic beverages gross receipts tax under chapter 57-39.6, as may be amended subsequently by the legislative assembly, for taxable transactions and activities occurring exclusively within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
2. A tribe or tribes shall impose a tax equal to the state's alcoholic beverages gross receipts tax on all sales at retail of alcoholic beverages within the exterior boundaries of the reservation in this state.
3. Chapters 57-39.2 and 57-39.6, and title 81 of the North Dakota Administrative Code govern the administration of the taxes subject to an agreement under this section.
4. The governor and the tribe or tribes must agree the tribe or tribes may not impose any direct or indirect tribal tax or fee on retailers, transactions, or activities subject to the tax agreement. This subsection does not apply to tribal employment rights office fees.
5. The amount of tax revenue allocated to the tribe pursuant to an agreement under this section must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcoholic beverages gross receipts tax revenue per capita. The state alcoholic beverages gross receipts tax revenue per capita is the quarterly collections of the state's alcoholic beverages gross receipts tax designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau.
6. Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by



September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

7. a. Notwithstanding any other provision of state law, the agreement must contain provisions in which:
  - (1) Except as otherwise provided by law, the tax commissioner shall maintain the confidentiality of tax information relating to and gathered under the terms of an agreement as provided in section 57-39.2-23;
  - (2) The tribe or tribes may receive a list of retailers located within the exterior boundaries of the reservation and the amount of tax collected from each retailer during a reporting period; and
  - (3) The tribe or tribes agree to protect the confidentiality of tax information received from the tax commissioner.
- b. The agreement must specify the processes or procedures necessary to safeguard the confidential nature of the tax information.
8. Alcoholic beverages gross receipts taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation under an agreement entered under this chapter.

#### **57-39.10-06. Inapplicability of chapter 54-40.2.**

Chapter 54-40.2 does not apply to an agreement entered under this chapter.

#### **57-39.10-07. Alcoholic beverages wholesale tax revenue allocation and distribution - Refunds - Continuing appropriation.**

1. The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 4 of section 57-39.10-03. Tax revenues collected under section 57-39.10-03 are provided as a standing and continuing appropriation to the state treasurer for distribution on a quarterly basis.
2. Refunds of the tax imposed under chapters 5-01, 5-02, and 5-03 which are subject to an agreement under section 57-39.10-03 must be paid from the state general fund and are provided to the state treasurer as a standing and continuing appropriation.
3. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund paid under subsection 2 is attributable. The refund, including interest at the rate prescribed in section 5-03-06, must be reimbursed to the state general fund from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund is attributable.

#### **57-39.10-08. Tobacco products wholesale tax revenue allocation and distribution - Refunds - Continuing appropriation.**

1. The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 4 of section 57-39.10-04. Tax revenues collected under section 57-39.10-04 are provided as a standing and continuing appropriation to the state treasurer for distribution on a quarterly basis.
2. Refunds of the tax imposed under chapter 57-36 which are subject to an agreement under section 57-39.10-04 must be paid from the general fund and are provided to the state treasurer as a standing and continuing appropriation.
3. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund paid under subsection 2 is attributable. The refund must be reimbursed to the state general fund from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund is attributable.

**57-39.10-09. Alcoholic beverages gross receipts tax revenue allocation and distribution - Refunds - Continuing appropriation.**

1. The tax commissioner shall certify and transfer to the state treasurer for deposit in the tribal allocation fund, a special fund created in the state treasury, tax revenues allocated to a tribe or tribes under subsection 5 of section 57-39.10-05. Tax revenues collected under section 57-39.10-05 are not subject to section 57-39.2-26.1, and are provided as a standing and continuing appropriation to the state treasurer for distribution on a quarterly basis.
2. Refunds of the tax imposed under chapter 57-39.6, which are subject to an agreement under section 57-39.10-05, must be paid from the state general fund, and are provided to the state treasurer as a standing and continuing appropriation.
3. Refunds of taxes paid under this section must be reimbursed to the state general fund, with interest at the rate prescribed in section 57-39.2-25, from the first available moneys deposited in the tribal allocation fund.
4. The tax commissioner shall determine the reservation of the tribe or tribes to which the refund is attributable. The refund, including interest, must be reimbursed from the first available moneys deposited in the tribal allocation fund on behalf of the tribe or tribes to which the refund paid under this section is attributable.

**247 SECTION 2. REPEAL.** Chapter 57-39.8 of the North Dakota Century Code is repealed.

**SECTION 3. APPLICATION.** Section 1 of this Act applies to agreements entered after the effective date of this Act.

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

Approved March 28, 2019

Filed March 29, 2019

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<sup>247</sup> Chapter 57-39.8 was also repealed by section 2 of Senate Bill No. 2258, chapter 500.

## CHAPTER 502

### HOUSE BILL NO. 1292

(Representatives Schmidt, Dockter, B. Koppelman)

AN ACT to amend and reenact subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to the definition of purchase price for motor vehicle excise tax purposes.

#### 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. The purchase price excludes the amount of a manufacturer's incentive or discount that reduces the amount paid by the purchaser to the seller at the time of purchase. If a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed against one or more replacement motor vehicle purchases in a cumulative amount not to exceed the total amount the purchaser has been compensated by an insurance company for the loss plus the amount of the purchaser's deductible at the time of the loss. For a leased vehicle that is stolen or totally destroyed, the credit may not exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company within three years from the date of issuance verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss and the amount of the purchaser's deductible at the time of the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. If the full amount of the credit under this subsection has not been used, the director of the department of transportation shall record on the face of the notarized statement the necessary information to identify the partial use of the credit and shall retain a copy and return the original to the purchaser. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average

value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 503

### SENATE BILL NO. 2187

(Senators J. Lee, Mathern, Sorvaag)  
(Representatives Dockter, Holman, Mitskog)

AN ACT to amend and reenact subsection 7 of section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for motor vehicles used to transport the elderly or disabled; and to provide an effective date.

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

<sup>248</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

7. Any motor vehicle in the possession of and used ~~as a bus~~ exclusively by a nonprofit senior citizens' or handicapped persons' corporation for transportation of the elderly or disabled; provided, that ~~such bus~~the motor vehicle may not be used for commercial activities.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2019.

Approved March 21, 2019

Filed March 22, 2019

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<sup>248</sup> Section 57-40.3-04 was also amended by section 11 of House Bill No. 1012, chapter 12.

## CHAPTER 504

### HOUSE BILL NO. 1066

(Representatives Nathe, Owens, Porter, Howe, Vigesaa, Lefor, D. Ruby, Mock)  
(Senators Wardner, Cook, Robinson, Bekkedahl)

AN ACT to create and enact a new section to chapter 2-05 and sections 57-51.1-07.7 and 57-51.1-07.8 of the North Dakota Century Code, relating to infrastructure funds; to amend and reenact subsection 5 of section 57-51-01 and sections 57-51-15, 57-51.1-07.3, and 57-51.1-07.5 of the North Dakota Century Code, relating to oil and gas tax revenue allocations; to provide a continuing appropriation; to provide for a report; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 2-05 of the North Dakota Century Code is created and enacted as follows:

##### **Airport infrastructure fund.**

There is created in the state treasury the airport infrastructure fund. The fund consists of all moneys deposited in the fund pursuant to chapter 57-51.1. Moneys in the fund may be spent by the aeronautics commission pursuant to legislative appropriations to provide grants to airports for infrastructure projects. Grant funds must be distributed giving priority to projects that have been awarded or are eligible to receive federal funding.

**SECTION 2. AMENDMENT.** Subsection 5 of section 57-51-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Hub city" means a city with a population of twelve thousand five hundred or more, according to the last official decennial federal census, which ~~has more than two percent of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakotais located in a county that has oil and gas gross production tax or oil extraction tax revenue collections attributed to it, as reported by the tax commissioner in certifications made to the state treasurer, in any three consecutive months during the twenty-four month period preceding September first of the most recent odd-numbered year.~~

<sup>249</sup> **SECTION 3. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-51-15. Gross production tax allocation.**

The gross production tax must be allocated monthly as follows:

1. The tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited

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<sup>249</sup> Section 57-51-15 was also amended by section 22 of House Bill No. 1014, chapter 14.

with the state treasurer. The state treasurer shall allocate the funding in the following order:

- a. ~~To each hub city, which is located in a county that received an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of three hundred seventy five thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota. For purposes of the allocations under this subdivision during the period beginning September 1, 2017, and ending August 31, 2018, the state treasurer shall use the following employment percentages:~~
  - (1) ~~Thirty-three percent for the city of Williston;~~
  - (2) ~~Seventeen percent for the city of Dickinson; and~~
  - (3) ~~Four percent for the city of Minot.~~
- b. ~~To each hub city, which is located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of two hundred fifty thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of its private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota.~~
- e. ~~To each hub city school district, which is located in a county that received an allocation under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one hundred twenty five thousand dollars per fiscal year for each full or partial percentage point, excluding the first two percentage points, of the hub city's private covered employment engaged in the mining industry, according to annual data compiled by job service North Dakota. Hub city school districts, which are located in a county that did not receive an allocation under subsection 2 in the most recently completed even-numbered fiscal year, must be excluded from the allocations under this subdivision. For purposes of the allocations under this subdivision during the period beginning September 1, 2017, and ending August 31, 2018, the state treasurer shall use the following employment percentages:~~
  - (1) ~~Thirty-three percent for the city of Williston;~~
  - (2) ~~Seventeen percent for the city of Dickinson; and~~
  - (3) ~~Four percent for the city of Minot.~~
- d. ~~To each county that received more than five million dollars but less than thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will be added to the allocations to school districts under subdivision b of subsection 5, as follows:~~

- (1) ~~To each county that received more than five million dollars but not exceeding ten million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.~~
  - (2) ~~To each county that received more than ten million dollars but not exceeding fifteen million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million two hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.~~
  - (3) ~~To each county that received more than fifteen million dollars but not exceeding twenty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.~~
  - (4) ~~To each county that received more than twenty million dollars but not exceeding twenty-five million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of seven hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.~~
  - (5) ~~To each county that received more than twenty-five million dollars but not exceeding thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year, the state treasurer shall allocate a monthly amount that will provide a total allocation of five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to subdivision b of subsection 5.~~
- e. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding ten million dollars per biennium. For purposes of this paragraph, "biennium" means the period beginning September first of each odd-numbered calendar year and ending August thirty first of the following odd-numbered calendar year.
- (2) After August 31, 2019, the state treasurer shall allocate eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding twenty million dollars per fiscal year.
- f. (1) For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate four percent of the amount



~~available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding four million dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.~~

- ~~(2) After August 31, 2019, the state treasurer shall allocate four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.~~
- ~~g. For the period beginning September 1, 2017, and ending August 31, 2019, the state treasurer shall allocate the remaining revenues in the following order:~~
- ~~(1) Up to twenty five million dollars to the oil and gas impact grant fund.~~
- ~~(2) Any remaining revenues under subsection 3.~~
- ~~h. After August 31, 2019, the state treasurer shall allocate the remaining revenues in the following order:~~
- ~~(1) Up to five million dollars per biennium to the oil and gas impact grant fund. For purposes of this paragraph, "biennium" means the period beginning September first of each odd-numbered calendar year and ending August thirty-first of the following odd-numbered calendar year.~~
- ~~(2) Any remaining revenues under subsection 3~~Eight percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding twenty million dollars per fiscal year.~~~~
- ~~b. Four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars per fiscal year and not in an amount that would bring the balance in the fund to more than one hundred million dollars.~~
- ~~c. Any remaining revenues pursuant to subsection 3.~~
- ~~i.d. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.~~
2. The tax revenue collected under this chapter equal to four percent of the gross value at the well of the oil and four-fifths of the tax on gas must be deposited with the state treasurer. The state treasurer shall allocate the funding in the following order:
- a. During the period beginning September 1, 2017, and ending August 31, 2019, for counties that received less than five million dollars of total allocations under this subsection in the most recently completed even-numbered fiscal year, then after deduction of the amount provided in

- ~~subsection 1, the state treasurer shall allocate revenue collected under this chapter from oil and gas produced in each county as follows:~~
- ~~(1) The first five million dollars of collections received each fiscal year is allocated to the county.~~
  - ~~(2) The remaining revenue collections received each fiscal year are allocated thirty percent to the county and seventy percent to the state for allocations under subsection 3.~~
- ~~b. During the period beginning September 1, 2017, and ending August 31, 2019, for counties that received five million dollars or more of total allocations under this subsection in the most recently completed even-numbered fiscal year, then after deduction of the amount provided in subsection 1, the state treasurer shall allocate revenue collected under this chapter from oil and gas produced in each county as follows:~~
- ~~(1) The first five million dollars of collections received each fiscal year is allocated to the county. From the first five million dollars allocated to the county, the state treasurer shall allocate an amount from each county to the energy impact fund to provide a total allocation of two million per fiscal year to the fund. The amount allocated from each county to the energy impact fund under this paragraph must be proportional to the county's monthly oil and gas gross production tax revenue collected relative to the total monthly oil and gas gross production tax revenue collected from all the counties under this subdivision. The state treasurer shall allocate the amount remaining from this paragraph to the county under subsection 5. For the purposes of determining the counties that received five million dollars or more of total allocations under this subsection in the most recently completed even-numbered fiscal year under this section, any amounts withheld from the county for allocations to the energy impact fund are considered allocations to the county.~~
  - ~~(2) The remaining revenue collections received each fiscal year are allocated thirty percent to the county and seventy percent to the state for allocations under subsection 3.~~
- ~~c. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated after August 31, 2019, as follows:~~
- ~~(1) The first five million dollars is allocated to the county.~~
  - ~~(2) Of all annual revenue exceeding five million dollars, thirty percent is allocated to the county. The first five million dollars of collections received from a county each fiscal year is allocated to the county.~~
- ~~b. The remaining revenue collections received from a county each fiscal year are allocated thirty percent to the county and seventy percent as follows:~~
- ~~(1) Monthly amounts to the hub city funding pool to provide fifteen million four hundred thousand dollars per fiscal year for the allocations under paragraph 2 of subdivision a of subsection 5.~~

- (2) Monthly amounts to the hub city school district funding pool to provide two million one hundred thousand dollars per fiscal year for the allocations under paragraph 3 of subdivision a of subsection 5.
- (3) Monthly amounts to the supplemental school district funding pool to provide seventy percent of the total amount needed for the allocations under paragraph 4 of subdivision a of subsection 5.
- (4) Any remaining revenue collections to the state for the state's allocations pursuant to subsection 3.

d-c. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.

3. After the allocations under subsections 1 and 2, the amount remaining is allocated first to provide for deposit of thirty percent of all revenue collected under this chapter in the legacy fund as provided in section 26 of article X of the Constitution of North Dakota and the remainder must be allocated to the state general fund. If the amount available for a monthly allocation under this subsection is insufficient to deposit thirty percent of all revenue collected under this chapter in the legacy fund, the state treasurer shall transfer the amount of the shortfall from the state general fund share of oil extraction tax collections and deposit that amount in the legacy fund.
4. For a county that received less than five million dollars of allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, revenues allocated to that county must be distributed at least quarterly by the state treasurer as follows:
  - a. Forty-five percent must be distributed to the county treasurer and credited to the county general fund. However, the distribution to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
  - b. Thirty-five percent must be distributed proportionally to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from distributions under this subdivision.
  - c. Twenty percent must be distributed to the incorporated cities of the county. A hub city must be omitted from distributions under this subdivision. Distributions among cities under this subsection must be proportional based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.

- d. For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
5. For a county that received five million dollars or more of allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, revenues allocated to that county must be distributed at least quarterly by the state treasurer as follows:
- a. A portion of the revenues from each county must be distributed to a hub city funding pool, a hub city school district funding pool, and a supplemental school district funding pool as follows:
- (1) The amount distributed from each county to the funding pools under this subdivision must be proportional to each county's monthly oil and gas gross production tax revenue collections relative to the combined total monthly oil and gas gross production tax revenue collections from all the counties that receive allocations under this subsection.
- (2) The state treasurer shall distribute, to the hub city funding pool, the monthly amount needed from each county to provide six million six hundred thousand dollars per fiscal year for the allocations under this paragraph.
- (a) The state treasurer shall allocate monthly amounts from the hub city funding pool to provide a combined total of twenty-two million dollars per fiscal year to all the hub cities, which includes the fifteen million four hundred thousand dollars under paragraph 1 of subdivision b of subsection 2 and the six million six hundred thousand dollars under this paragraph. The monthly allocation to each hub city must be proportional to each hub city's impact percentage score, including fractional percentage points rounded to the nearest tenth of a percent, relative to the combined total of all the hub cities' impact percentage scores.
- (b) The state treasurer shall calculate the impact percentage score for each hub city by summing the following:
- [1] The percentage of mining, quarrying, and oil and gas extraction employment relative to the total employment of all industries in the county in which the hub city is located, based on the most recent annual data for all ownership types compiled by job service North Dakota in the quarterly census of employment and wages, multiplied by forty-five hundredths;
- [2] The average of the percentage of mining, quarrying, and oil and gas extraction employment relative to the total employment of all industries in each county for all the counties in the human service region in which the hub city is located, based on the most recent annual data for all ownership types compiled by job service North Dakota in the quarterly census of employment and wages, multiplied by fifteen hundredths;
- [3] The percentage of establishments engaged in mining, quarrying, and oil and gas extraction relative to the total

establishments of all industries in the county in which the hub city is located, based on the most recent annual data for all ownership types compiled by job service North Dakota in the quarterly census of employment and wages, multiplied by one-tenth;

- [4] The percentage of oil production in the human service region in which the hub city is located relative to the total oil production in all the human service regions with hub cities, based on the most recently available calendar year data compiled by the industrial commission in a report on the historical barrels of oil produced by county, multiplied by one-tenth;
  - [5] The percentage change in population from five years prior for the hub city, based on the most recent actual or estimated census data published by the United States census bureau, multiplied by one-tenth; and
  - [6] The percentage change in population from five years prior for the county in which the hub city is located, based on the most recent actual or estimated census data published by the United States census bureau, multiplied by one-tenth.
- (c) For purposes of this paragraph, "human service region" means the areas designated by the governor's executive order 1978-12 dated October 5, 1978.
- (3) The state treasurer shall distribute, to the hub city school district funding pool, the monthly amount needed from each county to provide nine hundred thousand dollars per fiscal year for the allocations under this paragraph.
- (a) The state treasurer shall allocate monthly amounts from the hub city school district funding pool to provide a combined total of three million dollars per fiscal year to all the hub city school districts, which includes the two million one hundred thousand dollars under paragraph 2 of subdivision b of subsection 2 and the nine hundred thousand dollars under this paragraph. The monthly allocation to each hub city school district must be proportional to each hub city school district's impact percentage score, including fractional percentage points rounded to the nearest tenth of a percent, relative to the combined total of all the hub cities' impact percentage scores.
  - (b) For the purpose of determining the impact percentage score for each hub city school district, the state treasurer shall use the same impact percentage score as the corresponding score calculated for each hub city in paragraph 2.
- (4) The state treasurer shall distribute, to the supplemental school district funding pool, the monthly amount needed from each county to provide for thirty percent of the total allocations under this paragraph. To each county that received more than five million dollars but less than thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the

biennium, the state treasurer shall allocate a monthly amount from the supplemental school district funding pool which will be added to the distributions to school districts under paragraph 2 of subdivision b, as follows:

- (a) To each county that received more than five million dollars but not exceeding ten million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to paragraph 2 of subdivision b.
  - (b) To each county that received more than ten million dollars but not exceeding fifteen million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million two hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to paragraph 2 of subdivision b.
  - (c) To each county that received more than fifteen million dollars but not exceeding twenty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, the state treasurer shall allocate a monthly amount that will provide a total allocation of one million dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to paragraph 2 of subdivision b.
  - (d) To each county that received more than twenty million dollars but not exceeding twenty-five million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, the state treasurer shall allocate a monthly amount that will provide a total allocation of seven hundred fifty thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to paragraph 2 of subdivision b.
  - (e) To each county that received more than twenty-five million dollars but not exceeding thirty million dollars of total allocations under subsection 2 in the most recently completed even-numbered fiscal year before the start of the biennium, the state treasurer shall allocate a monthly amount that will provide a total allocation of five hundred thousand dollars per fiscal year. The allocation must be distributed to school districts within the county pursuant to paragraph 2 of subdivision b.
- b. After the distributions in subdivision a, each county's remaining revenues must be distributed as follows:
- (1) Sixty percent must be distributed to the county treasurer and credited to the county general fund. However, the distribution to a county under

this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.

b. (2) Five percent must be distributed proportionally to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from distributions under this subdivision.

e. (3) Twenty percent must be distributed to the incorporated cities of the county. A hub city must be omitted from distributions under this subdivision. Distributions among cities under this subsection must be proportional based upon the population of each incorporated city according to the last official decennial federal census. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent.

d. Three

(4) Four percent must be allocated among the organized and unorganized townships of the county. The state treasurer shall allocate the funds available under this subdivision among townships in proportion to each township's road miles relative to the total township road miles in the county. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.

~~e. Three percent must be allocated among the organized and unorganized townships in all the counties that received five million dollars or more of allocations under subsection 2 in the most recently completed even-numbered fiscal year. The amount available under this subdivision must be allocated by the state treasurer in an equal amount to each eligible organized and unorganized township. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.~~

f. (5) Nine percent must be distributed among hub cities. Sixty percent of funds available under this subdivision must be distributed to the hub city receiving the highest percentage of allocations to hub cities under subdivision a of subsection 1 for the quarterly period, thirty percent of funds available under this subdivision must be distributed to the hub city receiving the second highest percentage of such allocations, and ten percent of funds available under this subdivision must be distributed to the hub city receiving the third highest percentage of such allocations. Hub cities, which are located in a county that did not receive an allocation under subsection 2 in the most recently

~~completed even-numbered fiscal year, must be excluded from the allocations under this subsection. If fewer than three hub cities are eligible for the allocations under this subdivision, the state treasurer shall allocate the available funds in proportion to the amounts the eligible hub cities received under subdivision a of subsection 4. The state treasurer shall distribute the funds available under this subdivision in proportion to the amounts the hub cities receive under paragraph 2 of subdivision a.~~

(6) Two percent must be distributed among hub city school districts. The state treasurer shall distribute the funds available under this subdivision in proportion to the amounts the hub city school districts receive under paragraph 3 of subdivision a.

~~g- (7) For purposes of this subsection, "fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.~~

6. Within thirty days after the end of each calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the calendar year with the commissioner, in a format prescribed by the commissioner, including:
  - a. The county's statement of revenues and expenditures;
  - b. The county's ending fund balances;
  - c. The amounts allocated under this section to the county's general fund, the amounts expended from these allocations, and the purposes of the expenditures; and
  - d. The amounts allocated under this section to or for the benefit of townships within the county, the amounts expended from these allocations, and the purposes of the expenditures.

Within fifteen days after the time when reports under this subsection are due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

7. Within thirty days after the end of each fiscal year ended June thirtieth, each school district that has received an allocation under this section shall file a report for the fiscal year ended June thirtieth with the commissioner, in a format prescribed by the commissioner, including:
  - a. The school district's statement of revenue and expenditures;
  - b. The school district's ending fund balances; and
  - c. The amounts allocated under this section to the school district, the amounts expended from these allocations, and the purposes of the expenditures.

Within fifteen days after the time when reports under this subsection are due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.



**SECTION 4. AMENDMENT.** Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.**

There is established a special fund in the state treasury to be known as the oil and gas research fund. Before depositing oil and gas gross production tax and oil extraction tax revenues in the general fund, tax relief fund, budget stabilization fund, strategic investment and improvements fund, state disaster relief fund, or lignite research fund under section 57-51.1-07.5, two percent of the revenues must be deposited monthly into the oil and gas research fund, up to ten million dollars per biennium. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

<sup>250</sup> **SECTION 5. AMENDMENT.** Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.5. State share of oil and gas taxes - Deposits.**

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium in the following order:

1. The first two hundred million dollars into the state general fund;
2. The next two hundred million dollars into the tax relief fund;
3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;
4. For the period beginning August 1, 2017, and ending July 31, 2019, the next two hundred million dollars into the state general fund and after July 31, 2019, the next one hundred million dollars into the state general fund;
5. The next one hundred million dollars:
  - a. Eighty percent into the strategic investment and improvements fund and twenty percent into the lignite research fund until three million dollars has been deposited into the lignite research fund to be used for advanced energy technology grants; and
  - b. One hundred percent into the strategic investment and improvements fund after three million dollars has been deposited into the lignite research fund; and
6. The next twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than twenty million dollars; and

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<sup>250</sup> Section 57-51.1-07.5 was also amended by section 9 of Senate Bill No. 2016, chapter 41.

7. The next thirty million three hundred seventy-five thousand dollars, or the amount necessary to provide for the distributions under subsection 2 of section 57-51.1-07.7, into the municipal infrastructure fund;
8. The next four hundred million dollars into the strategic investment and improvements fund;
9. An amount equal to the deposit under subsection 7 into the county and township infrastructure fund;
10. The next one hundred sixty-nine million two hundred fifty thousand dollars or the amount necessary to provide a total of two hundred thirty million dollars into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;
11. The next twenty million dollars into the airport infrastructure fund; and
12. Any additional revenues into the strategic investment and improvements fund.

**SECTION 6.** Section 57-51.1-07.7 of the North Dakota Century Code is created and enacted as follows:

**57-51.1-07.7. Municipal infrastructure fund - Continuing appropriation - State treasurer - Reports.**

There is created in the state treasury the municipal infrastructure fund. The fund consists of all moneys deposited in the fund under section 57-51.1-07.5. All moneys in the fund are appropriated to the state treasurer on a continuing basis for the purpose of providing grants to cities located in non-oil-producing counties. The grant funding may be distributed only to cities located in non-oil-producing counties, excluding hub cities, and may be used only for essential infrastructure projects.

1. By November thirtieth of each even-numbered year, starting in 2022, a city that receives a grant from the fund shall provide a report to the state treasurer on the use of the funding. The state treasurer shall notify cities of the reporting requirement by November first of each even-numbered year, starting in 2022. Upon request, the state treasurer may provide an extension of up to fifteen days for a city to submit the report. The state treasurer shall determine the format of the report. The report must include the amount of grant funding received and spent by the city and a description of the infrastructure projects completed in part or in whole with the grant funding. The state treasurer shall make the reports available to the public on the state treasurer's website. A city that does not provide the report in a timely manner or in the correct format is not eligible to receive a grant from the fund for a period of two years starting from the date the report was due. If a city uses the funding in a manner inconsistent with the requirements of this section as identified in any financial audits conducted by the state auditor or an independent accounting firm, the state treasurer shall reduce any future grants to that city by the amount spent that was inconsistent with the requirements.
2. Within forty days after the fund balance is greater than or equal to the amount needed for the grants under this subsection or by September thirtieth of each odd-numbered year, whichever is earlier, the state treasurer shall distribute

moneys in the fund as grants to cities for essential infrastructure projects based on the following:

- a. Two million five hundred thousand dollars to each city with a population of at least five thousand;
  - b. Five hundred thousand dollars to each city with a population of at least two thousand but less than five thousand; and
  - c. One hundred twenty-five thousand dollars to each city with a population of at least one thousand but less than two thousand.
  - d. If, at the time of the distributions, the moneys in the fund are less than the amount needed for the grants under this subsection, the state treasurer shall distribute the grants under this subsection on a pro rata basis.
  - e. For the purposes of determining the city's population under this subsection, the state treasurer shall use the most recent actual or estimated census data published by the United States census bureau.
3. Within sixty days after the fund receives its statutory limit of oil and gas tax allocations under section 57-51.1-07.5 or by September thirtieth of each odd-numbered year, whichever is earlier, the state treasurer shall distribute the moneys in the fund as grants to cities for essential infrastructure projects based on the following:
- a. One hundred fifty dollars per person of the city's population.
  - b. In addition to the amounts in subdivision a, for a city with a positive average of the annual percentage increase in population from three years prior, a dollar amount equal to the product of the following:
    - (1) The amount calculated in subdivision a; and
    - (2) The average of the annual percentage increase in population from three years prior, multiplied by ten.
  - c. In addition to the amounts in subdivisions a and b, for a city with a positive average of the annual percentage increase in taxable property values from three years prior, a dollar amount equal to the average of the annual property valuation percentage increase for the three most recent years, multiplied by twenty-five thousandths.
  - d. Grants may be distributed under this subdivision only if the grant distributions under subsection 2 are completed. If the moneys in the fund are insufficient to provide for the grants, the state treasurer shall distribute the grants under this subsection on a pro rata basis. If any moneys remain in the fund after the distribution of grants under this subsection, the state treasurer shall distribute any remaining moneys in the fund in proportion to the combined total distributed to each city under this section relative to the combined total distributed to all the cities under this section.
  - e. For the purposes of determining the city's population under this subsection, the state treasurer shall use the most recent actual or estimated census data published by the United States census bureau.

- f. For the purposes of determining taxable property values, the state treasurer shall use the most recent data published by the tax commissioner in the tax levy report.
4. For purposes of this section:
- a. "Essential infrastructure projects" means capital construction projects to construct new infrastructure or to replace existing infrastructure, which provide the fixed installations necessary for the function of a city. Capital construction projects exclude debt repayments and routine maintenance and repair projects, but include the following:
- (1) Water treatment plants;
  - (2) Wastewater treatment plants;
  - (3) Sewer lines and water lines, including lift stations and pumping systems;
  - (4) Water storage systems, including dams, water tanks, and water towers;
  - (5) Storm water infrastructure, including curb and gutter construction;
  - (6) Road and bridge infrastructure, including paved and unpaved roads and bridges;
  - (7) Airport infrastructure;
  - (8) Electricity transmission infrastructure;
  - (9) Natural gas transmission infrastructure; and
  - (10) Communications infrastructure, excluding fiber optic infrastructure.
- b. "Fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
- c. "Non-oil-producing county" means a county that received no allocation of funding or a total allocation of less than five million dollars under subsection 2 of section 57-51-15 in the most recently completed even-numbered fiscal year before the start of each biennium.

**SECTION 7.** Section 57-51.1-07.8 of the North Dakota Century Code is created and enacted as follows:

**57-51.1-07.8. County and township infrastructure fund - Continuing appropriation - State treasurer - Reports.**

There is created in the state treasury the county and township infrastructure fund. The fund consists of all moneys deposited in the fund under section 57-51.1-07.5. All moneys in the fund are appropriated to the state treasurer on a continuing basis for the purpose of providing grants to non-oil-producing counties and townships located in non-oil-producing counties. The grant funding may be distributed only to non-oil-producing counties and townships located in non-oil-producing counties and may be used only for road and bridge infrastructure projects.

1. By November thirtieth of each even-numbered year, starting in 2022, a county that receives a grant from the fund shall provide a report to the state treasurer on the use of the funding. The state treasurer shall notify counties of the reporting requirement by November first of each even-numbered year, starting in 2022. Upon request, the state treasurer may provide an extension of up to fifteen days for a county to submit the report. The state treasurer shall determine the format of the report. The report must include the amount of grant funding received and spent by the county and a description of the road and bridge infrastructure projects completed in part or in whole with the grant funding. The state treasurer shall make the reports available to the public on the state treasurer's website. A county that does not provide the report in a timely manner or in the correct format is not eligible to receive a grant from the fund for a period of two years starting from the date the report was due. If a county uses the funding in a manner inconsistent with the requirements of this section as identified in any financial audits conducted by the state auditor or an independent accounting firm, the state treasurer shall reduce any future grants to that county by the amount spent that was inconsistent with the requirements.
2. Within sixty days after the fund receives its statutory limit of oil and gas tax allocations under section 57-51.1-07.5 or by September thirtieth of each odd-numbered year, whichever is earlier, the state treasurer shall distribute moneys in the fund as grants to counties for road and bridge infrastructure projects.
3. The state treasurer shall distribute the lesser of thirteen percent of the balance of the fund or sixteen million one hundred thousand dollars to non-oil-producing counties for the benefit of the organized and unorganized townships within each non-oil-producing county. The distribution to each non-oil-producing county must provide for an equal allocation to each organized and unorganized township. The amount allocated to organized townships under this section must be paid by the county treasurer to each organized township. The amount allocated to unorganized townships under this section must be credited by the county treasurer to a special fund for unorganized township roads. A township is not eligible for an allocation of funds under this section if the township does not maintain any township roads.
4. After the distributions in subsection 3, the state treasurer shall distribute the remaining money in the fund to non-oil-producing counties based on the most recent data compiled by the upper great plains transportation institute regarding North Dakota's county, township, and tribal road and bridge infrastructure needs. The distribution to each non-oil-producing county must be proportional to each non-oil-producing county's total estimated road and bridge investment needs relative to the combined total estimated road and bridge investment needs of all the non-oil-producing counties. The total estimated road and bridge investment needs for each county is the twenty-year estimate for unpaved and paved road and bridge needs as identified by the upper great plains transportation institute. If the data compiled by the upper great plains transportation institute includes more than one twenty-year estimate for the total needs of each county, the state treasurer shall use an average of the twenty-year estimates for each county.
5. If the moneys in the fund are insufficient to provide for the grants under this section, the state treasurer shall distribute the grants on a pro rata basis.

6. For purposes of this section:

- a. "Fiscal year" means the period beginning September first and ending August thirty-first of the following calendar year.
- b. "Non-oil-producing county" means a county that received no allocation of funding or a total allocation of less than five million dollars under subsection 2 of section 57-51-15 in the most recently completed even-numbered fiscal year before the start of each biennium.
- c. "Road and bridge infrastructure projects" means the projects associated with the construction of new unpaved and paved road and bridge infrastructure or associated with the maintenance, repair, or replacement of existing unpaved and paved road and bridge infrastructure.

**SECTION 8. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2019.

Approved March 20, 2019

Filed March 20, 2019

## CHAPTER 505

### SENATE BILL NO. 2362

(Senators Cook, Holmberg, Wardner)  
(Representatives Delzer, Headland, Pollert)  
(Approved by the Delayed Bills Committee)

AN ACT to amend and reenact section 57-51.1-07 of the North Dakota Century Code, relating to the allocation of oil extraction tax; to provide a contingent appropriation; to provide for a transfer; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

~~**57-51.1-07. Allocation of moneys in oil extraction tax development fund. (Effective through July 31, 2019)**~~

~~Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:~~

- ~~1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. Three percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to exceed three million dollars per biennium. One half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed two hundred thousand dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:~~
  - ~~a. The state water commission for planning for and construction of water related projects, including rural water systems. These water related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02.~~
  - ~~b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.~~

- e. The department of commerce for the funding of programs for development of energy conservation and for the making of grants and loans relating to energy conservation.
2. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
3. Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
4. Thirty percent must be allocated and credited to the state's general fund.

**Allocation of moneys in oil extraction tax development fund. (Effective after July 31, 2019)**

Moneys deposited in the oil extraction tax development fund from revenue collected under section 57-51.1-02 and oil extraction tax revenue allocated to the state under the terms of an agreement entered pursuant to chapter 57-51.2 must be transferred monthly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. Three percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the renewable energy development fund, not to exceed three million dollars per biennium. One-half of one percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund not to exceed one million two hundred thousand dollars per biennium. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
  - b. The industrial commission for the funding of programs for development of renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
  - c. The department of commerce for the funding of programs for development of energy conservation and for the making of grants and loans relating to energy conservation.



2. One-half of one percent must be allocated to the resources trust fund beginning with allocations made by the state treasurer in August 2019 and continuing until the combined allocations under this subsection total one hundred twenty-eight million seven hundred forty thousand dollars, after which the state treasurer shall discontinue making allocations under this subsection.
3. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
- ~~3-4.~~ Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
4. Thirty percent
5. The remainder must be allocated and credited to the state's general fund.

**SECTION 2. CONTINGENT APPROPRIATION - TRANSFER - GENERAL FUND TO COMMON SCHOOLS TRUST FUND.** If the actual legacy fund earnings transferred to the general fund at the end of the 2019-21 biennium in accordance with section 26 of article X of the Constitution of North Dakota exceed the estimate made by the sixty-sixth legislative assembly by at least \$64,370,000, there is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$64,370,000, which the state treasurer shall immediately transfer to the common schools trust fund, for the biennium beginning July 1, 2019, and ending June 30, 2021.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for allocations made by the state treasurer beginning on the first day of the month following the month in which this Act is filed with the secretary of state.

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

Approved April 11, 2019

Filed April 12, 2019

## CHAPTER 506

### SENATE BILL NO. 2312

(Senators Kannianen, Wardner)  
(Representative Pollert)

AN ACT to amend and reenact section 57-51.2-01 and subsection 5 of section 57-51.2-02 of the North Dakota Century Code, relating to the allocation of revenue from oil and gas production and oil extraction taxes imposed on production and extraction activity on a reservation in this state; to suspend section 54-35-23 of the North Dakota Century Code, relating to the tribal and state relations committee; to provide for a legislative management tribal taxation issues committee; to provide for application; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 57-51.2-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-51.2-01. Authority to enter agreements.**

The governor, in consultation with the tax commissioner, may enter separate agreements with the Three Affiliated Tribes, Standing Rock Sioux Tribe, and Turtle Mountain Band of Chippewa Indians, relating to taxation and regulation of oil and gas exploration and production within the exterior boundaries of the Fort Berthold Reservation, ~~that portion of the Standing Rock Sioux Tribe Reservation located in this state,~~ or Turtle Mountain Band of Chippewa Indians Reservation and on trust properties outside reservation boundaries. Each tribal governing body is entitled to enter a separate agreement that conforms with the requirements of this chapter.

~~Each agreement under this chapter is subject to confirmation by a majority of members elected to the house of representatives and the senate and does not become effective until its confirmation date or the effective date in the agreement, whichever is later. Each agreement presented for confirmation must contain an expiration date not more than sixteen years after its effective date and the expiration date must be March thirty first of an odd-numbered year.~~

**SECTION 2. AMENDMENT.** Subsection 5 of section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:

5. The allocation of revenue from oil and gas gross production and oil extraction taxes on the reservation must be as follows:
  - a. Production attributable to trust lands. ~~All~~The tribe must receive eighty percent of the total revenues, and be subject to all applicable exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the reservation and on trust properties outside reservation boundaries must be evenly divided between the tribe and the state. The state must receive the remainder.

- b. All other production. The tribe must receive ~~fifty~~twenty percent of the total oil and gas gross production and oil extraction taxes collected, and be subject to all applicable exemptions, from all production attributable to nontrust lands on the reservation in lieu of the application of tribal fees and taxes related to production on such lands. The state must receive the remainder.
- c. The state's share of the oil and gas gross production tax revenue as divided in subdivisions a and b is subject to distribution among political subdivisions as provided in chapter 57-51.

**SECTION 3. SUSPENSION.** Section 54-35-23 of the North Dakota Century Code is suspended.

**SECTION 4. TRIBAL TAXATION ISSUES - LEGISLATIVE MANAGEMENT COMMITTEE.**

1. During the 2019-20 interim, the tribal taxation issues committee is created and is composed of ten members as follows:
  - a. The governor;
  - b. The lieutenant governor;
  - c. The tax commissioner;
  - d. The executive director of the Indian affairs commission;
  - e. The majority leader of the house of representatives and the majority leader of the senate;
  - f. The minority leader of the house of representatives and the minority leader of the senate; and
  - g. The chairmen of the finance and taxation standing committees of the house of representatives and the senate.
2. The nonlegislative members shall serve as nonvoting members of the committee.
3. The legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedures governing the operation of other legislative management interim committees.
4. The committee shall study tribal taxation issues, including the tax collection agreements that exist between the tribes and the state, the interaction between tribal sovereignty and state law, consideration of how statutory changes may affect provisions in existing agreements, the amount and manner of revenue sharing under the agreements, the costs and benefits to the state and the tribes if tax compacts are implemented, implementation models used in other states for tax compacts, best practices for negotiating and ratifying tax compacts, the procedure for withdrawal from an agreement and how to handle disputed funds; and methods for sourcing revenue generated from wells located inside or outside of the external boundaries of a reservation in this state when a horizontal lateral enters a spacing unit that is

located both inside and outside of the external boundaries of a reservation in this state.

5. The committee may study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development.
6. The chairman of the committee shall invite tribal chairmen to each committee meeting.
7. At the conclusion of its meetings, the committee shall report on its findings and recommendations, together with any legislation required to implement those recommendations, to the legislative management.

**SECTION 5. APPLICATION.** Sections 1 and 2 of this Act are effective for all new oil and gas wells on which drilling first commences after June 30, 2019, and which are the subject of an agreement authorized under this chapter, or the first day of the next succeeding month after the date an agreement authorized under this chapter is executed, whichever occurs later.

**SECTION 6. EXPIRATION DATE.** Section 3 of this Act is effective through July 31, 2021, and after that date is ineffective.

**SECTION 7. EMERGENCY.** Sections 1 and 2 of this Act are declared to be an emergency measure.

Approved March 28, 2019

Filed March 29, 2019

# WATERS

## CHAPTER 507

### SENATE BILL NO. 2139

(Senators Luick, Osland, Vedaa)  
(Representatives Beadle, Mitskog, Pyle)

AN ACT to amend and reenact sections 61-02-01.4, 61-02-02, 61-02-04, 61-02-07, and 61-02-14 of the North Dakota Century Code, relating to cost-sharing and duties and membership of the state water commission.

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

**SECTION 1. AMENDMENT.** Section 61-02-01.4 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-02-01.4. State water commission cost-share policy.**

The state water commission shall review, gather stakeholder input on, and rewrite as necessary the commission's "Cost-share Policy, Procedure and General Requirements" and "Project Prioritization Guidance" documents. The commission's cost-share policy:

1. Must provide a water supply project is eligible for a cost-share up to seventy-five percent of the total eligible project costs.
2. May not determine program eligibility of water supply projects based on a population growth factor. However, a population growth factor may be used in prioritizing projects for that purpose.
3. Must consider all project costs potentially eligible for reimbursement, except the commission shall exclude operations expense and regular maintenance, ~~including and~~ removal of vegetative materials and sediment, for ~~water conveyance projects~~ assessment drains, and may exclude operations expense and regular maintenance for other projects. Snagging and clearing of watercourses are not regular maintenance. The commission shall require a water project sponsor to maintain a capital improvement fund from the rates charged customers for future extraordinary maintenance projects as condition of funding an extraordinary maintenance project.
4. May not determine program eligibility of water supply projects based on affordability. However, affordability may be used in prioritizing projects for that purpose.

**SECTION 2. AMENDMENT.** Section 61-02-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-02-02. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the state water commission.
2. "Cost of works" includes:
  - a. The cost of construction, the cost of all lands, property rights, water rights, easements, and franchises acquired which are deemed necessary for such construction;
  - b. The cost of all water rights acquired or exercised by the commission in connection with ~~such~~the works;
  - c. The cost of all machinery and equipment, financing charges, interest ~~prior to~~before and during construction and for a period not exceeding three years after the completion of construction;
  - d. The cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of ~~any~~a project;
  - e. Administrative expenses;
  - f. The construction of the works and the placing of the ~~same~~works in operation; and
  - g. ~~Such other~~Other expenses ~~as may be~~ necessary or incident to the financing authorized in this chapter, including funding of debt service, repair and replacement reserves, capitalized interest, and the payment of bond issuance costs.
3. "Cost-share" means funds appropriated by the legislative assembly or otherwise transferred by the commission to a local entity under commission policy as reimbursement for a percentage of the total approved cost of a project approved by the commission.
4. "Economic analysis" means an estimate of economic benefits and direct costs that result from the development of a project.
5. "Grant" means a one-time sum of money appropriated by the legislative assembly and transferred by the commission to a local entity for a particular purpose. A grant is not dependent on the local entity providing a particular percentage of the cost of the project.
6. "Life cycle analysis" means the summation of all costs associated with the anticipated useful life of a project, including project development, land, construction, operation, maintenance, and disposal or decommissioning.
7. "Loan" means an amount of money lent to a sponsor of a project approved by the commission to assist with funding approved project components. A loan may be stand-alone financial assistance.
8. "Owner" includes all individuals, associations, corporations, limited liability companies, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired.

9. "Project" means any one of the works defined in subsection 4110, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.
10. "Water conveyance project" means any ~~surface drainage works, bank assessment drain, streambank~~ stabilization, or snagging and clearing of water courses.
11. "Works" includes:
  - a. All property rights, easements, and franchises relating ~~theretoto~~ and deemed necessary or convenient for their operation;
  - b. All water rights acquired and exercised by the commission in connection with such works;
  - c. All means of conserving and distributing water, including ~~without limiting the generality of the foregoing two subdivisions,~~ reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and
  - d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water, including ~~without limiting the generality of the foregoing subdivisions,~~ works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

**SECTION 3. AMENDMENT.** Section 61-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-04. State water commission - Members - Terms - Qualifications.**

The state water commission consists of the governor, agriculture commissioner, and ~~seveneight~~ other members appointed by the governor who shall take into account reasonable geographic considerations in making the appointments with the intent of having each of the ~~seveneight~~ major drainage basins represented by a commissioner who resides in the basin. The major drainage basins are the upper Missouri River basin; the lower Missouri River basin; the James River basin; the upper Red River basin; the lower Red River basin; the Mouse River basin; ~~and~~ the Devils Lake basin; ~~and the Little Missouri River, upper Heart River, and upper Cannonball River basin.~~ The governor or the agriculture commissioner, or both, may appoint a representative to serve in that official's capacity at meetings that official is unable to attend. The ~~seveneight~~ appointive members of the commission must be appointed for a term of six years each with the terms of office so arranged that ~~two terms and~~ not more than ~~three~~four terms expire on the first day of July of each odd-numbered year. Each appointive member must be a qualified elector of the state and is subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

**SECTION 4. AMENDMENT.** Section 61-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-07. Quorum - What constitutes.**

A majority of the members of the commission constitutes a quorum, and the affirmative or negative vote of ~~five~~six members is necessary to bind the commission except for adjournment.

**SECTION 5. AMENDMENT.** Section 61-02-14 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-14. Powers and duties of the commission.**

The commission ~~shall have full and complete power, authority, and general jurisdiction authorized:~~

1. To investigate, plan, regulate, undertake, construct, establish, maintain, control, operate, and supervise all works, dams, and projects, public and private, which in ~~its~~the commission's judgment may be necessary or advisable:
  - a. To control the low-water flow of streams in the state.
  - b. To impound water for the improvement of municipal, industrial, and rural water supplies.
  - c. To control and regulate floodflow in the streams of the state to minimize the damage of such floodwaters.
  - d. To conserve and develop the waters within the natural watershed areas of the state and, subject to vested rights, to divert the waters within a watershed area to another watershed area and the waters of any river, lake, or stream into another river, lake, or stream.
  - e. To improve the channels of the streams for more efficient transportation of the available water in the streams.
  - f. To provide sufficient water flow for the abatement of stream pollution.
  - g. To develop, restore, and stabilize the waters of the state for domestic, agricultural, and municipal needs; irrigation; flood control; recreation; and wildlife conservation by the construction and maintenance of dams, reservoirs, and diversion canals.
  - h. To promote the maintenance of existing drainage channels in agricultural lands and to construct any needed channels.
  - i. To provide more satisfactory subsurface water supplies for the state's municipalities ~~of the state~~.
  - j. To finance the construction, establishment, ~~operation,~~ and extraordinary maintenance of public and private works, dams, and irrigation projects, which in ~~its~~the commission's judgment may be necessary and advisable, ~~except the.~~ The commission may not provide a cost-share for the costs of operation ~~of regular~~ maintenance, ~~including~~or removal of vegetative materials and sediment, ~~of a water conveyance project for assessment drains. Snagging and clearing of watercourses are not regular maintenance.~~



- k. To provide for the storage, development, diversion, delivery, and distribution of water for the irrigation of agricultural land and supply water for municipal and industrial purposes.
  - l. To provide for the drainage of lands injured by or susceptible of injury from excessive rainfall or from the utilization of irrigation water, and subject to the limitations prescribed by law, to aid and cooperate with the United States and any department, agency, or officer thereof of the United States, and with any county, township, drainage district, or irrigation district of this state, or of ~~other states~~ another state, in the construction or improvement of ~~such~~ the drains.
  - m. To provide water for stock.
  - n. To provide water for the generation of electric power and for mining and manufacturing purposes.
2. To define, declare, and establish rules and regulations:
    - a. For the sale of waters and water rights to individuals, associations, corporations, limited liability companies, municipalities, and other political subdivisions of the state and for the delivery of water to users.
    - b. For the full and complete supervision, regulation, and control of the water supplies within the state.
    - c. ~~Repealed by S.L. 1975, ch. 575, § 2.~~
    - d. Governing and providing for financing by local participants to the maximum extent deemed practical and equitable in any water development project in which the state participates in cooperation with the United States or with political subdivisions or local entities.
  3. To exercise full power and control of the construction, operation, and maintenance of works and the collection of rates, charges, and revenues realized ~~therefrom~~ from the works.
  4. To sell, lease, and otherwise distribute all waters which may be developed, impounded, and diverted by the commission under ~~the provisions of this chapter~~, for the purposes of irrigation, the development of power, and the watering of livestock, and for any other private or public use.
  5. To exercise all express and implied rights, power, and authority that may be necessary, and to do, perform, and carry out ~~all of the expressed purposes of this chapter and all of the purposes reasonably implied incidentally thereto~~ or lawfully connected ~~therewith~~ with the expressed purposes of this chapter.
  6. To acquire, own, and develop lands for irrigation and water conservation and to acquire, own, and develop damsites and reservoir sites and to acquire easements and rights of way for diversion and distributing systems.
  7. To cooperate with the United States and any department, agency, or officer thereof of the United States in the planning, establishment, operation, and maintenance of dams, reservoirs, diversion and distributing systems, for the utilization of the waters of the state for domestic, municipal, and industrial

needs, irrigation, flood control, water conservation, and generation of electric power and for mining, agricultural, and manufacturing purposes, ~~and in this connection the state water. The commission is hereby authorized~~ may, within the limitations prescribed by law, ~~to~~ acquire, convey, contribute, or grant to the United States, moneys, real and personal property, including land or easements for dams and reservoir sites and rights of way and easements for diversion and distribution systems or participate in the cost of any project.

8. To consider cost-sharing for water quality improvement projects.

Approved April 17, 2019

Filed April 18, 2019

## CHAPTER 508

### SENATE BILL NO. 2090

(Energy and Natural Resources Committee)  
(At the request of the State Engineer)

AN ACT to create and enact sections 61-04-02.2, 61-04-04.3, 61-04-07.2, 61-04-07.3, 61-04-15.2, 61-04-15.3, and 61-04-15.4 of the North Dakota Century Code, relating to permits for the appropriation of water; to amend and reenact sections 61-04-01, 61-04-01.1, 61-04-01.2, 61-04-02, 61-04-03, 61-04-03.1, 61-04-04, and 61-04-04.1, subsections 3, 4, and 5 of section 61-04-05, and sections 61-04-05.1, 61-04-06, 61-04-06.1, 61-04-06.2, 61-04-06.3, 61-04-09, 61-04-11, 61-04-14, 61-04-15, 61-04-23, 61-04-24, 61-04-25, 61-04-26, 61-04-27, 61-04-28, and 61-04-29 of the North Dakota Century Code, relating to the appropriation of water; and to repeal sections 61-04-07, 61-04-15.1, 61-04-17, and 61-04-22 of the North Dakota Century Code, relating to appeals of permit application rejections, change in point of diversion or use, surplus water delivery, and a prescriptive water right.

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

**SECTION 1. AMENDMENT.** Section 61-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-01. Petitions, reports, surveys, and other documents filed ~~in office~~ with the commission.**

Any petitions, applications, surveys, reports, orders, or other documents provided for in this chapter ~~shall~~must be filed ~~in~~with the ~~office of the commission in the city of~~ Bismarck, where they ~~shall~~must be kept on file under the control of the state engineer.

**SECTION 2. AMENDMENT.** Section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **61-04-01.1. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Adjudicative proceeding" ~~as defined under chapter 28-32 provides for~~means an appeal under chapter 28-32 of a recommended decision prepared by the state engineer for a water permit application.
2. "Assignment" ~~means the change of a water permit from one permitholder to another permitholder.~~
3. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
- ~~3-4.~~ "Commission" means the state water commission.
- ~~4-5.~~ "Conditional water permit" ~~means a water permit that has not been perfected.~~

6. "Domestic use" means the use of water by at least one family unit or household obtaining water from the same system for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for each family unit or household for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use.
- 5-7. "Fish, wildlife, and recreation~~other recreational uses~~" means the use of water for the purposes of propagating and sustaining fish and wildlife resources and for the development and maintenance of water areas necessary for outdoor recreation activities.
- 6-8. "Fossil byproduct water" means water obtained as a byproduct of extraction and separation from oil, gas, and other hydrocarbons, from a formation that is both not a potable aquifer at the extraction location and is situated below the deepest potable aquifer by the practically impermeable layer.
9. "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including manufacturing, mining, or processing.
- 7-10. "Informational hearing" means an administrative proceeding, not an adjudicative proceeding, which provides all interested persons an opportunity to present oral or written comments on a water permit application.
- 8-11. "Irrigation use" means the use of water for application to more than five acres [2.0 hectares] of land to stimulate the growth of agricultural crops, including gardens, orchards, lawns, trees, or shrubbery, or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.
- 9-12. "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals kept for commercial purposes.
- 40-13. "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency or entity, for primarily domestic purposes, as defined herein.
11. "~~Person~~" ~~includes political subdivisions, corporations, limited liability companies, partnerships, associations, the United States and its departments or agencies, the state of North Dakota and its departments or agencies, and any other legal entity.~~
14. "Party of record" means a person who filed written comments by the date specified under subsection 5 of section 61-04-05.
15. "Perfected water permit" means a water permit where the water appropriated under a conditional water permit has been applied to a beneficial use and the state engineer has inspected the works to verify all conditions have been met.
16. "Permitholder" means the name of the entity holding a water permit.

17. "Point of diversion" means the tract of land where the waters of the state are withdrawn or diverted.
18. "Priority date" means the date assigned to an application or water right.
- 12-19. "Rural water system" means a water supply system designed to serve regional needs.
- 13-20. "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.
21. "Water right" means the right established under this title to appropriate or store waters of the state.

**SECTION 3. AMENDMENT.** Section 61-04-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-01.2. Right to use water – Basis Beneficial use requirement.**

A right to appropriate water can be acquired for beneficial use only as provided in this chapter. Beneficial use shall be the basis, the measure, and the limit of the right to the use of water.

**SECTION 4. AMENDMENT.** Section 61-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-02. Permit for beneficial use of water required.**

Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the state engineer unless such construction or taking from such constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. However, immediately upon completing any constructed works for domestic or livestock purposes or for fish, wildlife, and other recreational uses, the water user shall notify the state engineer of the location and acre-feet [1233.48 cubic meters] capacity of such constructed works, dams, or dugouts. Regardless of proposed use, however, all water users, except those reusing fossil byproduct water, shall secure a water permit prior to constructing an impoundment capable of retaining more than twelve and one-half acre-feet [15418.52 cubic meters] of water or the construction of a well from which more than twelve and one-half acre-feet [15418.52 cubic meters] of water per year will be appropriated. If a permit is not required of a landowner or the landowner's lessee to appropriate less than twelve and one-half acre-feet [15418.52 cubic meters] of water from any source for domestic or livestock purposes or for fish, wildlife, and other recreational uses, those appropriators may apply for water permits in order to clearly establish a priority date and the state engineer may waive any fee or hearing for such applications. An applicant for a water permit to irrigate need not be the owner of the land to be irrigated.

**SECTION 5.** Section 61-04-02.2 of the North Dakota Century Code is created and enacted as follows:

**61-04-02.2. Property interest required to hold a water permit.**

A permitholder shall have a legal interest in each point of diversion identified on the permit. If the permitholder does not have a legal interest in each point of

diversion, the state engineer shall assign the permit, or portion of the permit, as provided in this chapter to the title owner.

A permit holder shall have a legal interest in each irrigated tract of land identified on the permit. If the permit holder does not have a legal interest in each irrigated tract of land, the permit holder may transfer the approved acres to other land, as provided in this chapter.

**SECTION 6. AMENDMENT.** Section 61-04-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-03. ~~Application for water~~Water permit application - Contents - Information to accompany.**

~~The application for a~~A permit application to make beneficial use of any waters of the state ~~shall~~must be in the form required by the rules established by the state engineer. ~~Such~~The rules shall prescribe the form and contents of, and the procedure for filing, the application. The application, along with all other information filed with it, ~~shall~~must be retained ~~in~~with the office of the commission after approval or disapproval of the application. The state engineer may require additional information not provided for in the general rules if the state engineer deems it to be necessary.

**SECTION 7. AMENDMENT.** Section 61-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-03.1. Limitation on amount of water.**

An individual may not apply for a permit or permits for irrigation which, if approved, would enable the individual, at any one time, to hold a conditional water permit or permits for more than seven hundred twenty acre-feet [888106.75 cubic meters] of water which has not been applied to beneficial use. Applications submitted in violation of this section ~~shall~~may not be assigned a priority date and ~~shall~~must be returned to the applicant by the state engineer. This section ~~shall~~may not apply to water permit applications ~~for water permits~~ from the Missouri River or to applications submitted by irrigation districts organized pursuant to this title. For the purposes of this section, an individual means any person, including the person's spouse, and dependents thereof within the meaning of the Internal Revenue Code [26 U.S.C. 152].

**SECTION 8. AMENDMENT.** Section 61-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-04. Filing and correction of application.**

The date of the receipt of the application provided for in section 61-04-03 in the commission office shall be noted ~~thereon~~on the application. If the application is defective as to form, incomplete, or otherwise unsatisfactory, it ~~shall~~must be returned with a statement of the corrections, amendments, or changes required, within thirty days after its receipt, and sixty days ~~shall~~must be allowed for the refiling thereof. If the application is corrected as required and is refiled within ~~such~~the time allowed, it, upon being accepted, ~~shall~~must take priority as of the date of its original filing. Any corrected application filed after the time allowed ~~shall~~must be treated in all respects as an original application received on the date of its refiling. The application may be amended by the applicant at any time prior to the commencement of administrative action by the state engineer as provided in sections 61-04-05 through ~~61-04-07~~61-04-06.3.

**SECTION 9. AMENDMENT.** Section 61-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-04.1. Application fees.**

The following fees must accompany ~~ana~~ conditional water permit application and must be paid by the state engineer into the water user resources trust fund of the state treasury:

1.	<del>For municipal or public use in municipalities or other entities of 2,500 population or over according to the latest federal census</del>	<del>\$500</del>
1.	<u>For municipal or public use</u>	<u>\$500</u>
2.	<del>For municipal or public use in municipalities or other entities of less than 2,500 population according to the latest federal census</del>	<del>\$250</del>
3.	<del>For irrigation</del>	<del>\$200</del>
2.	<u>For irrigation use</u>	<u>\$500</u>
4.	<del>For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet [893039.52 cubic meters] or less</del>	<del>\$250</del>
3.	<u>For industrial use of one acre-foot [1233.48 cubic meters] or less</u>	<u>\$250</u>
5.	<del>For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet [893039.52 cubic meters]</del>	<del>\$750</del>
4.	<u>For industrial use in excess of one acre-foot [1233.48 cubic meters]</u>	<u>\$1,000</u>
6.	<del>For recreation, livestock, or fish and wildlife</del>	<del>\$400</del>
5.	<u>For recreation, livestock, or fish and wildlife</u>	<u>\$100</u>
7.	<del>For commercial recreation</del>	<del>\$200</del>
8.	<del>Water permit amendment</del>	<del>\$50</del>
6.	<u>Water permit amendment</u>	<u>\$100</u>

**SECTION 10.** Section 61-04-04.3 of the North Dakota Century Code is created and enacted as follows:

**61-04-04.3. Rejection of applications.**

If the state engineer determines a conditional water permit application does not meet this chapter's requirements or the rules in North Dakota Administrative Code article 89-03, the state engineer shall reject the application and decline to order the publication of notice of application.

**SECTION 11. AMENDMENT.** Subsections 3, 4, and 5 of section 61-04-05 of the North Dakota Century Code are amended and reenacted as follows:

3. Give notice of the application by certified mail in the form prescribed by rule to all municipal or public use ~~water facilities~~permitholders within a twelve-mile [19.32-kilometer] radius of the proposed water appropriation site. The state

engineer shall provide a list of all municipal or public use ~~water facilities~~permitholders that must be notified under this subsection to the applicant.

4. Provide the state engineer with an affidavit of notice by certified mail within sixty days from the date of the engineer's instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the state engineer shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. If a properly completed affidavit of notice is not submitted within one hundred twenty days, the state engineer shall consider the application withdrawn. Upon receipt of a proper affidavit of notice by certified mail, the state engineer shall publish notice of the application, in a form prescribed by rule, in the official newspaper of the county in which the proposed appropriation site is located, once a week for two consecutive weeks.
5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments and requests for an informational hearing regarding the proposed appropriation must be filed with the state engineer. The notice must also state that anyone who files written comments with the state engineer will be mailed ~~a copy of~~ the state engineer's recommended decision on the application. Persons filing written comments will become a party of record to the application. The comment deadline is five p.m. on the first business day thirty days after the first published notice in the official county newspaper as specified in subsection 4.

**SECTION 12. AMENDMENT.** Section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-05.1. Comments - Hearing.**

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer under subsection 5 of section 61-04-05. The comments must state the name and mailing address of the person filing the comments. Comment letters submitted electronically must state the name and mailing address of the person filing the comments, and must be signed by the submitter to be considered valid and part of the official record.
2. A person filing written comments may also request an informational hearing on the application by the date specified by the state engineer under subsection 5 of section 61-04-05. If a request for an informational hearing is made and if the state engineer determines an informational hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the informational hearing and ~~serve a copy of the~~ notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.
3. If two or more municipal or public use ~~water facilities~~permitholders request the informational hearing to be held locally, the state engineer shall hold the



hearing in the county seat of the county in which the proposed water appropriation site is located.

4. The state engineer shall consider all written comments received and testimony presented at an informational hearing, if held, and shall ~~recommend~~make a recommended decision in writing approval or disapproval of the application or that the application be held in abeyance. ~~A copy of the~~ The recommended decision must be mailed to the applicant and any person who filed written comments party of record and may constitute:
  - a. Approval of all or a portion of the application, with the remainder held in abeyance or denied;
  - b. Denial of the application; or
  - c. Deferral of the application.
5. ~~Within thirty days of service of the recommended decision, the applicant and any person party of record who would be aggrieved by the decision and who filed written comments by the date specified under subsection 5 of section 61-04-05 may file additional written comments with the state engineer or request an adjudicative proceeding on the application, or both. A request for an adjudicative proceeding must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the proceeding. If a request for an adjudicative proceeding is not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for an adjudicative proceeding is made, and if the state engineer determines an adjudicative proceeding is necessary, the state engineer shall designate a time and place for the adjudicative proceeding and serve a copy of the notice of adjudicative proceeding upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.~~

**SECTION 13. AMENDMENT.** Section 61-04-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-06. Criteria for issuance of permit.**

1. The state engineer shall issue a permit if the state engineer finds all of the following:
  1. a. The rights of a prior appropriator will not be unduly affected.
  2. b. The proposed means of diversion or construction are adequate.
  3. c. The proposed use of water is beneficial.
  4. d. The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:
    - a. (1) The benefit to the applicant resulting from the proposed appropriation.
    - b. (2) The effect of the economic activity resulting from the proposed appropriation.

- e. (3) The effect on fish and game resources and public recreational opportunities.
  - d. (4) 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. (5) Harm to other persons resulting from the proposed appropriation.
  - f. (6) The intent and ability of the applicant to complete the appropriation.
2. Subsection 1 of section 28-32-38 does not apply to water permit application proceedings unless a request for a ~~hearing~~ adjudicative proceeding is made. If an application is approved, the state engineer shall issue a conditional water permit allowing the applicant to appropriate water. ~~Provided, however~~ However, the commission ~~may~~, by resolution, may 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 14. AMENDMENT.** Section 61-04-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-06.1. Preference in granting permits.**

When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the state engineer shall adhere to the following order of priority:

1. Domestic use.
2. Municipal or public use.
3. Livestock use.
4. Irrigation use.
5. Industrial use.
6. Fish, wildlife, and other ~~outdoor~~ recreational uses.

**SECTION 15. AMENDMENT.** Section 61-04-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-06.2. Terms of permit.**

The state engineer may issue a conditional water permit for less than the amount of water requested. Except for water permits for incorporated municipalities or rural water systems, the state engineer may not issue a permit for more water than can be beneficially used for the purposes stated in the application. Water permits for incorporated municipalities or rural water systems may contain water in excess of present needs based upon what may reasonably be necessary for the future water requirements of the municipality or the rural water system. The state engineer may require modification of the plans and specifications for the appropriation. The state

engineer may issue a permit subject to fees for water use and conditions the state engineer considers necessary to protect the rights of others and the public interest. Conditions must be related to matters within the state engineer's jurisdiction. All conditions attached to any permit issued before July 1, 1975, are binding upon the permitteepermitholder.

**SECTION 16. AMENDMENT.** Section 61-04-06.3 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-06.3. Priority.**

Priority in time ~~shall give~~gives the superior water right. Priority of a water right acquired under this chapter dates from the filing of an application with the state engineer, except for water applied to domestic; or livestock purposes, or fish, wildlife, and other recreational uses in which case the priority date ~~shall~~must relate back to the date when the quantity of water in question was first appropriated, unless otherwise provided by law.

Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire reasonably the prior appropriator's water under the changed conditions.

**SECTION 17.** Section 61-04-07.2 of the North Dakota Century Code is created and enacted as follows:

**61-04-07.2. Conditional water permit application denial.**

If the state engineer determines an application or any portion of an application does not meet the criteria prescribed in section 61-04-06 for any reason other than sufficient information or data is lacking to allow for sound decisionmaking of the impacts of the proposed diversion on the prior appropriators, the resource, or the public interest, the application or portion must be denied.

**SECTION 18.** Section 61-04-07.3 of the North Dakota Century Code is created and enacted as follows:

**61-04-07.3. Conditional water permit application deferral.**

If the state engineer determines an application or any portion of an application does not meet the criteria prescribed in section 61-04-06 because sufficient information or data is lacking to allow for sound decisionmaking of the impacts of the proposed diversion on the prior appropriators, the resource, or the public interest, the conditional water permit application must be placed in a deferred status. The applicant must be notified by mail the application has been placed in deferred status.

**SECTION 19. AMENDMENT.** Section 61-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-09. Application to beneficial use - Inspection - Perfected water permit.**

After the permit's beneficial use date, or upon notice from the permitholder that water has been applied to a beneficial use, the state engineer shall notify the conditional water permitholder and inspect the works. The inspection must determine the safety, efficiency, and actual capacity of the works. If the works are not properly and safely constructed, the state engineer may require the necessary changes to be

made within a reasonable time. Failure to make the changes within the time prescribed by the state engineer shall cause postponement of the permit's priority date to the date the changes are made to the satisfaction of the state engineer. Any intervening application submitted before the date the changes are made will have the benefit of the postponement of priority. When the works are properly and safely constructed and inspected, the state engineer shall issue the perfected water permit, setting forth the actual capacity of the works and the limitations or conditions upon the water permit as stated in the conditional water permit authorized by section 61-04-06.2. All conditions attached to any permit issued before July 1, 1975, are binding upon the ~~permittee~~permitholder.

**SECTION 20. AMENDMENT.** Section 61-04-11 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-11. Inspection of works.**

If the state engineer, in the course of the state engineer's duties, ~~shall find~~that finds any works used for the storage, diversion, or carriage of water are unsafe and a menace to life or property, the state engineer ~~at once~~ shall notify the owner or the owner's agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineer shall ~~cause inspect~~inspect any alleged unsafe works ~~to be inspected~~. If they shall be found unsafe by the state engineer, the money deposited by ~~such the~~the party shall ~~must~~must be refunded, and the fees for inspection shall ~~must~~must be paid by the owner of such works. If ~~such the~~the fees are not paid by the owner of ~~such the~~the works within thirty days after the decision of the state engineer, they shall ~~must~~must be a lien against any property of ~~such the~~the owner and shall ~~must~~must be recovered by a suit instituted by the state's attorney of the county at the request of the state engineer. The state engineer, when in the state engineer's opinion it is necessary, may inspect any works under construction for the storage, diversion, or carriage of water and may require any changes necessary to secure their safety. The fees for ~~such the~~the inspection shall ~~must~~must be a lien on any property of the owner and shall ~~must~~must be subject to collection as provided in this chapter but neither the United States nor the state of North Dakota nor any government agency thereof shall ~~may~~may be required to pay such fees.

**SECTION 21. AMENDMENT.** Section 61-04-14 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-14. Extending time for application to beneficial use.**

The state engineer may extend the time for the application of water to the beneficial use cited in the conditional water permit for good cause shown. When ~~such the~~the time has expired, the state engineer may renew and extend the same upon application; provided, however, a conditional water permit, or any portion thereof, shall ~~of the application must~~of the application must be considered forfeited, ~~abandoned, and void~~ if no request for renewal is received by the state engineer within sixty days after the date the ~~permittee~~permitholder is informed by ~~certified mail that~~ the period for applying water to the beneficial use cited in the conditional water permit has expired. If a request to extend the time for application to beneficial use for any conditional water permit, or portion thereof ~~of the permit, is denied, such the conditional water permit, or portion thereof, shall of the permit, must~~ be considered forfeited, ~~abandoned, and void~~. Sections 61-04-23 through 61-04-25 shall ~~do~~do not apply to this section.

**SECTION 22. AMENDMENT.** Section 61-04-15 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-15. Assignment or transfer of conditional or perfected water permit.**

~~Any conditional or perfected water permit may be assigned only upon approval by the state engineer. Any conditional or perfected water permit may also be transferred, with the approval of the state engineer, to any parcel of land owned or leased by the holder of such water permit. Upon reasonable proof that such the assignment or transfer can be made without detriment to existing rights, the state engineer shall cause assign the water permit involved to be assigned or simultaneously severed and transferred from such land without losing priority of any right previously established. The decision of the state engineer shall be final unless some party interested in the same source of water supply shall, within sixty days, bring appropriate action in the district court of the county in which the land is located appealing such decision. Applications for assignment and transfer shall be in the form required by regulation. The transfer of title to land in any manner whatsoever shall must carry with it all rights to the use of water for irrigation of such the land, except that any conditional or perfected water permit for irrigation purposes must be assigned in accordance with this section.~~

**SECTION 23.** Section 61-04-15.2 of the North Dakota Century Code is created and enacted as follows:

**61-04-15.2. Add a point of diversion.**

A permitholder may add a point of diversion to a conditional or perfected permit without affecting the priority date, if approved by the state engineer. Applications to add a point of diversion must be processed and evaluated in the same manner as a conditional water permit application. The state engineer may approve the additional point of diversion if the proposed addition will not adversely affect the rights of other appropriators.

**SECTION 24.** Section 61-04-15.3 of the North Dakota Century Code is created and enacted as follows:

**61-04-15.3. Transfer of approved irrigated acreage.**

A permitholder may transfer acres approved for irrigation on a conditional or perfected water permit to any tract of land owned or leased by the permitholder without affecting the priority date, if approved by the state engineer. The state engineer shall cause the water permit involved to be simultaneously severed and transferred from such land.

**SECTION 25.** Section 61-04-15.4 of the North Dakota Century Code is created and enacted as follows:

**61-04-15.4. Change in purpose of use.**

A permitholder may change the purpose of use of a conditional or perfected water permit without affecting the priority date, if approved by the state engineer. Applications for a change in the purpose of use must be processed and evaluated in the same manner as a conditional water permit application. A change in the purpose of use may be authorized only for a superior use as determined by the order of priority in section 61-04-06.1. The state engineer may approve the proposed change if the proposed change will not adversely affect the rights of other appropriators.

**SECTION 26. AMENDMENT.** Section 61-04-23 of the North Dakota Century Code is amended and reenacted as follows:

### **61-04-23. ForfeitureCancellation of water rights - Inspection of works.**

Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in the permit or ceases to use it for the beneficial use cited in the permit for three successive years, unless the failure or cessation of use has been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer may ~~declare~~cancel the water permit or right ~~forfeited~~. For purposes of this chapter, an incorporated municipality or rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit ~~may~~ reasonably may be necessary for the future water requirements of the municipality or the rural water system. The state engineer shall, as often as necessary, ~~shall~~ examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right and all ditches and other works constructed or partially constructed ~~thereunder~~under the permit or right.

**SECTION 27. AMENDMENT.** Section 61-04-24 of the North Dakota Century Code is amended and reenacted as follows:

### **61-04-24. ForfeitureCancellation of water rights - Notice - Contents.**

1. If it appears that any water appropriation or portion thereof ~~of an appropriation~~ has not been used for a beneficial use, or having been so used at one time has ceased to be used for that purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit ~~may~~ reasonably may be necessary for the future water requirements of the municipality or the rural water system. Any ~~holder of a water permit~~permitholder using water from a common source of supply, any applicant ~~therefor~~for a permit to use water from a common source of supply, or any interested party may request the state engineer to conduct a hearing, ~~the purpose of which is the cancellation of to cancel~~ any unused water rights to the common source of supply. Any decision of the state engineer in denying a request for a hearing may be appealed in the ~~manner prescribed by section 61-04-07~~accordance with chapter 28-32. Prior to the hearings, the state engineer shall serve notice upon the permitholder and upon the owners of land benefited by the appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice must be given to the governing body of the city, to show cause by ~~such~~such time and at ~~such~~such a place why the water appropriation or a portion thereof ~~of the appropriation~~ should not be declared ~~forfeited and canceled~~.
2. In addition to the time and place of hearing, the notice must contain:
  1. a. A description of the water appropriation.
  2. b. The permit number upon the records of the commission.
  3. c. The date of priority.
  4. d. The point of diversion.

5. ~~e.~~ A description of the lands benefited by the appropriation as indicated on the application for a water permit on file ~~in~~with the office of the commission.
6. ~~f.~~ Notice that the permitholder, the owners of land benefited by the appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why the appropriation, or a portion ~~thereof~~of the appropriation, should not be canceled.
3. The notice must be served personally or sent by ~~registered~~ or certified mail at least thirty days before the date of hearing to the permitholder and to the owners of land benefited by the appropriation as indicated on the application for a water permit on file ~~in~~with the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the recorder. In addition, the notice must be published in ~~the~~an official newspaper of general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

**SECTION 28. AMENDMENT.** Section 61-04-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-25. ForfeitureCancellation of water rights - Hearing - Appeal.**

At the hearing the ~~verified report~~recommended decision of the state engineer or engineers of the state water commission is prima facie evidence for the forfeiture and cancellation of the water permit or portion ~~thereof~~of the permit. If no one appears at the hearing, the water permit or portion thereof must be declared forfeited and canceled. If interested parties appear and contest the cancellation, the state engineer shall hear the evidence and, if it appears that the water has not been put to a beneficial use, or, having been so used at one time, has ceased to be used for ~~such~~the purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the ~~same~~permit, or a portion thereof of the permit, must be declared forfeited and canceled. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably may be necessary for the future water requirements of the municipality or the rural water system. An appeal may be taken from the decision of the state engineer in accordance with chapter 28-32.

**SECTION 29. AMENDMENT.** Section 61-04-26 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-26. Recorder to record water permit or order affecting water right.**

A water permit may be recorded as any other instrument affecting the title to real property without acknowledgment or further proof. ~~A copy of any~~The order declaring any canceling a water right, or portion thereof, forfeited, canceled, or abandoned ~~shall of a water right~~must be filed by the state engineer in the office of ~~with~~the county recorder in the county or counties where the affected land is located, and it shall be recorded as any other instrument affecting the title to real property without acknowledgment or further proof. Any document filed under this section shall ~~shall~~must be listed in the index of the property affected as provided in section 11-18-07.

**SECTION 30. AMENDMENT.** Section 61-04-27 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-27. Information filed with state engineer - Installation of measuring devices.**

~~On or before the~~ By March thirty-first day of March of each year all persons holding a water permit, permitholders shall file with the state engineer, on forms supplied by the state engineer, ~~topographic, mapping, foundation test borings, design, water use,~~ and such other information as the state engineer ~~shall require~~ requires. The state engineer may also ~~may~~ require ~~any such persons~~ permitholders to install measuring devices, ~~which must conform~~ conforming to the state engineer's specifications, at all points specified by the state engineer.

**SECTION 31. AMENDMENT.** Section 61-04-28 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-28. Correction of application or water right by state engineer.**

Upon proof satisfactory to the state engineer that ~~an application for a water permit~~ application or any water permit contains ~~an~~ nonmaterial error relative to the point of diversion, ~~the legal description of the land to which the water is to be applied, or the quantity of water,~~ the state engineer may, by written notice to the holder of the affected water permit ~~or application~~, correct the error without publication of notice.

**SECTION 32. AMENDMENT.** Section 61-04-29 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-29. Enforcement.**

The state engineer has full power and authority to institute, maintain, and prosecute to determination in an administrative proceeding or any of the courts of this state, or in any of the federal courts, any and all actions, suits, and special proceedings that may be necessary to enjoin unauthorized use of water, ~~to enforce an order of the state engineer or the state water commission, or to otherwise administer the provisions of this chapter.~~ Notwithstanding any other provision of law, the state engineer may issue administrative orders requiring the immediate cessation of water use when the state engineer has a reasonable belief ~~that such~~ the use is unauthorized or continued use will damage the rights of prior appropriators.

**SECTION 33. REPEAL.** Sections 61-04-07, 61-04-15.1, 61-04-17, and 61-04-22 of the North Dakota Century Code are repealed.

Approved April 23, 2019

Filed April 24, 2019



## CHAPTER 509

### SENATE BILL NO. 2295

(Senator Dotzenrod)

AN ACT to create and enact a new section to chapter 61-05 of the North Dakota Century Code, relating to limitations on the creation and jurisdiction of irrigation districts; and to amend and reenact sections 61-09-01 and 61-09-03 of the North Dakota Century Code, relating to permitting an irrigation district to assess lands requiring drainage as a result of irrigation works.

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

**SECTION 1.** A new section to chapter 61-05 of the North Dakota Century Code is created and enacted as follows:

##### Creation and jurisdiction of irrigation district - Limitations.

Notwithstanding section 61-05-02, an irrigation district may not be created if the primary purpose of the district is to provide drainage benefits to residents of the district. A drainage project proposed, undertaken, approved, or subject to assessment by an irrigation district also is subject to the permit requirements under chapter 61-32. Drainage benefits provided by an irrigation district may not impact the authority of a water resource board to assess for drainage projects under chapter 61-16.1 or 61-21.

**SECTION 2. AMENDMENT.** Section 61-09-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-09-01. District assessor to examine tracts of land to fix annual assessments levied thereon.**

Between the first Monday in March and the first Monday in June of each year, the district assessor shall examine each tract of land or legal subdivision of land in the district, including entered and unentered public lands of the United States, subject ~~thereto~~ to entry under any act of Congress, and all other lands publicly or privately owned. In determining irrigation or drainage benefits, the district assessor shall first ascertain the number of irrigable or drained acres [hectares] within each tract or subdivision, as determined by the board of directors, and this ~~shall~~ must form the primary basis for determining the benefits accruing ~~on account of the~~ due to construction, acquisition, or operation of irrigation or drainage works. In addition, the district assessor shall include such factors as methods of irrigation, power consumption, water conservation, and whether or not irrigable acres [hectares] are actually being irrigated. ~~Thereafter, the~~ The amount of benefits ~~so~~ apportioned or distributed to each tract of land as ~~finally~~ determined and equalized ~~shall~~ must be ~~and remain~~ the basis for fixing the annual assessments levied during that year against ~~such~~ the tracts or subdivisions in carrying out the provisions of this chapter.

**SECTION 3. AMENDMENT.** Section 61-09-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-09-03. Assessments spread in proportion to benefits received - Property subject to assessment for deficiency.**

Whenever any assessment is made within an irrigation district it ~~shall~~must be apportioned to and spread upon each unit or tract of land in the district in proportion to the benefits received, as determined by the assessor in accordance with section 61-09-01. Bonds, district improvement warrants, and other obligations incurred by the district ~~shall~~must be the obligations of the district. Only lands within the district benefited by irrigation or drainage provided by the district and subject to assessment for irrigation or drainage benefits ~~shall bear~~ subject to assessment for any fund created for the payment of bonds, district improvement warrants, and other district obligations. All assessments approved and levied by an irrigation district for any fund or purpose under the authority of this title ~~shall~~must be in the form of special assessments and ~~shall be~~ levied against both privately and publicly owned lands.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 510

### HOUSE BILL NO. 1087

(Agriculture Committee)  
(At the request of the State Engineer)

AN ACT to amend and reenact section 61-16.1-38 of the North Dakota Century Code, relating to a permit to construct or modify a dam, dike, or other device.

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

**SECTION 1. AMENDMENT.** Section 61-16.1-38 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency.**

No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented first to the state engineer. Except for low-hazard dams less than ten feet [3.05 meters] in height or agricultural dikes less than two feet [0.61 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state. After receipt, the state engineer shall consider the application in such detail as the state engineer deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete the state engineer's initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and suggest any changes, conditions, or modifications to the state engineer. If the application meets with the board's approval, the board shall forward the approved application to the state engineer. If the board fails to respond within forty-five days, it shall be determined the board has no changes, conditions, or modifications. The state engineer shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The state engineer may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device, which is capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

Approved March 8, 2019

Filed March 8, 2019

## CHAPTER 511

### SENATE BILL NO. 2091

(Energy and Natural Resources Committee)  
(At the request of the State Engineer)

AN ACT to amend and reenact section 61-16.2-08 of the North Dakota Century Code, relating to floodplain management community standards for permissible uses within the flood fringe.

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

**SECTION 1. AMENDMENT.** Section 61-16.2-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **61-16.2-08. Community standards - Permissible uses within flood fringe.**

Upon delineation of the floodplain or floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], the following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:

1. Any use permitted in the regulatory floodway pursuant to section 61-16.2-06.
2. Structures, including residential and nonresidential structures; provided, that:
  - a. Residential structures are constructed on fill such that the lowest floor, including basements, is elevated to at least one foot [30.48 centimeters] above the base flood elevation unless granted a residential basement floodproof exception under the national flood insurance program.
  - b. Nonresidential structures are either constructed on fill as specified in subdivision a elevated to at least one foot [30.48 centimeters] above the base flood elevation or are adequately floodproofed up to an elevation no lower than two feet [.61 meter] above the base flood elevation. Such floodproofing shall be in accordance with the standards either adopted by the community under the national flood insurance program [42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 512

### SENATE BILL NO. 2358

(Senators Wanzek, Dotzenrod, Luick)  
(Representative Pollert)

AN ACT to amend and reenact section 40-33-16, subsections 11 and 27 of section 61-24-08, subdivision b of subsection 2 of section 61-32-03.1, and subsection 8 of section 61-39-05 of the North Dakota Century Code, relating to Red River valley water supply project contract terms, elimination of voter approval requirements, and notice of proposed subsurface water management systems.

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

**SECTION 1. AMENDMENT.** Section 40-33-16 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-33-16. Municipality may purchase water for distribution.**

1. Any city owning a system for the distribution of water for fire protection and other public purposes and for selling water to its inhabitants and industries, but for which the water supply is unsuitable or inadequate, may contract to purchase water at wholesale for ~~such~~those purposes from any person, firm, public or private corporation, or limited liability company able and willing to furnish the same, upon ~~such~~the terms and during ~~such~~the period, not exceeding forty years, as the city governing body ~~shall~~ deem ~~deems~~ appropriate. ~~Any such~~The contract ~~shall~~ must be authorized by an ordinance submitted to the voters for approval by a majority of those voting on the proposition before it takes effect. ~~In and by such~~ Pursuant to the ordinance and contract, the city may bind itself:
  1. a. To establish and maintain rates and charges for supplying water by it to its inhabitants and industries, either according to a prescribed schedule agreed upon or sufficient to produce net stated amounts for specified periods during the life of the contract, or both, and to appropriate and use the same for payments to become due under the contract, and, if the contract so provides, the city ~~shall be~~ is obligated to pay for ~~such~~the water solely out of ~~such~~the net revenues;
  2. b. To pay, at an agreed rate or rates, for all water taken by the city under ~~such~~the contract and not resold by it; and
  3. c. To do and perform any other acts or things ~~which, in the discretion of the governing body, are deemed~~ deems reasonable and appropriate for the procurement of ~~such~~the water on the most efficient and economical basis.
2. Notwithstanding subsection 1, contracts to purchase water from the water supply system created by the Red River valley water supply project may have a term exceeding forty years and, if executed in relation to the initial construction of the system, need not be submitted to the voters for approval.

3. If any payments under any contract are to be made solely out of net revenues, the contract may fix and prescribe the method or basis on which net revenues are to be computed.

**SECTION 2. AMENDMENT.** Subsection 11 of section 61-24-08 of the North Dakota Century Code is amended and reenacted as follows:

11. To operate and maintain or to contract for the operation and maintenance of water supply and irrigation works serving lands and uses within or outside the district, and in connection therewith, to maintain a reserve fund to meet major unforeseen costs of operation and maintenance. The acquisition, construction, operation, and maintenance of dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any other plants, works, facilities, improvements, or property necessary to operate or maintain water supply or irrigation works under this section are exempt from any requirements for voter approval.

**SECTION 3. AMENDMENT.** Subsection 27 of section 61-24-08 of the North Dakota Century Code is amended and reenacted as follows:

27. To enter water service contracts with municipalities, water districts, or other political subdivisions in this state and public utilities in Minnesota as part of the Red River valley water supply project, regardless of whether the acquisition, construction, or reconstruction of any Red River valley water supply project is actually completed and whether water actually is delivered under the contracts. These contracts with cities and water districts are authorized to be executed without limitation on term of years ~~notwithstanding any limitation to the contrary and, if the contracts are executed in relation to the initial construction of the system, without voter approval.~~

**SECTION 4. AMENDMENT.** Subdivision b of subsection 2 of section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest waterway depicted as a perennial or intermittent stream or river on a United States geological survey topography map, assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.

**SECTION 5. AMENDMENT.** Subsection 8 of section 61-39-05 of the North Dakota Century Code is amended and reenacted as follows:

8. Enter ~~a contract or contracts~~ to provide for a supply of bulk water from the Garrison Diversion Conservancy District which ~~contract or contracts~~ may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, designing, constructing, or reconstructing one or more features of a Red River valley water supply project, ~~which project the~~ that the Garrison Diversion Conservancy District

may acquire, design, construct, improve, and own, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more Red River valley water supply projects, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the ~~contract or contracts, and which contract or contracts the Garrison Diversion Conservancy District may execute.~~ Contracts executed under this subsection may be executed without limitation on the term of years and, if executed in relation to the initial construction of the system, need not be submitted to the voters for approval.

Approved April 23, 2019

Filed April 24, 2019

## CHAPTER 513

### HOUSE BILL NO. 1202

(Representatives Delzer, Porter, Zubke)  
(Senator Schaible)

AN ACT to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact section 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

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

<sup>251</sup> **SECTION 1. AMENDMENT.** Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-33-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.
2. "Board of university and school lands" means that entity created by section 15-01-01.
3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.
4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.
- 4-5. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

**SECTION 2.** A new section to chapter 61-33 of the North Dakota Century Code is created and enacted as follows:

##### **Navigability determinations.**

1. Before making a determination that a body of water or portion of a body of water is navigable, the state engineer shall:

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<sup>251</sup> Section 61-33-01 was also amended by section 1 of Senate Bill No. 2211, chapter 514.



- a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and
  - b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.
2. After completing the requirements of subsection 1, the state engineer may proceed with making a final determination of navigability by:
- a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:
    - (1) Include the address and electronic mail address to which public comments may be sent and the deadline by which public comments must be received;
    - (2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;
    - (3) State the state engineer will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;
    - (4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;
    - (5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and
    - (6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and
  - b. Holding a public hearing regarding the preliminary finding.
3. After completing the requirements of subsection 2 and making a determination of navigability, the state engineer shall prepare a report regarding the determination, including summaries of the information provided to the state water commission, the public hearings held, and the public comments received. The state engineer shall provide the report to the state water commission, send the report by certified mail to any person that appeared at the public hearing required under subsection 2 or provided written comments by the deadline, make the report available to the public, including on the website for the office of the secretary of state, and provide public notice of the report's availability. The report is final on the date it is provided to the state water commission.

4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51.

<sup>252</sup> **SECTION 3. AMENDMENT.** Subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- e. ~~Subsection 3 of section~~Section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner.

**SECTION 4. REVIEWS OF NAVIGABILITY DETERMINATIONS DURING 2019-20 INTERIM.** During the 2019-20 interim, the state engineer may review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act. However, if a court of competent jurisdiction has determined a body of water or portion of a body of water is navigable or non-navigable, the state engineer does not need to review any state agency determination regarding the body of water or portion of a body of water. If the state engineer elects not to begin review of any determination of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act during the 2019-20 interim, the determination must be vacated without prejudice to a subsequent determination of navigability under section 2 of this Act. In conducting the reviews under this section, the state engineer shall comply with the requirements in section 2 of this Act.

Approved April 25, 2019

Filed April 26, 2019

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<sup>252</sup> Section 61-33.1-03 was also amended by section 4 of Senate Bill No. 2211, chapter 514.

## CHAPTER 514

### SENATE BILL NO. 2211

(Senators Bekkedahl, Dwyer, Unruh)  
(Representatives Keiser, Porter)

AN ACT to create and enact section 61-33-01.1 and a new subsection to section 61-33.1-03 of the North Dakota Century Code, relating to the determination of the ordinary high water mark; to amend and reenact sections 61-33-01 and 61-33.1-02, subdivision e of subsection 3 of section 61-33.1-03, sections 61-33.1-04, 61-33.1-05, and 61-33.1-07 of the North Dakota Century Code, relating to sovereign lands, determining the ordinary high water mark, and the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams; to provide for application; and to declare an emergency.

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

<sup>253</sup> **SECTION 1. AMENDMENT.** Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-33-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.
2. "Board of university and school lands" means that entity created by section 15-01-01.
3. "Ordinary high water mark" means that line below which the presence and action of the water upon the land is continuous enough so as to prevent the growth of terrestrial vegetation, destroy its value for agricultural purposes by preventing the growth of what may be termed an ordinary agricultural crop, including hay, or restrict its growth to predominantly aquatic species.
4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.
- 4.5. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

**SECTION 2.** Section 61-33-01.1 of the North Dakota Century Code is created and enacted as follows:

##### **61-33-01.1. Ordinary high water mark determination - Factors to be considered.**

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<sup>253</sup> Section 61-33-01 was also amended by section 1 of House Bill No. 1202, chapter 513.

The state engineer shall maintain ordinary high water mark delineation guidelines consistent with this section.

1. When determining the ordinary high water mark for delineating the boundary of sovereign lands, vegetation and soils analysis must be considered the primary physical indicators. When considering vegetation, the ordinary high water mark is the line below which the presence and action of the water is frequent enough to prevent the growth of terrestrial vegetation or restrict vegetation growth to predominately aquatic species. Generally, land, including hay land, where the high and continuous presence of water has destroyed the value of the land for agricultural purposes must be deemed within the ordinary high water mark.
2. When feasible, direct hydrological and hydraulic measurements from stream gauge data, elevation data, historic records of water flow, high resolution light detection and ranging systems, prior elevation and survey maps, and statistical hydrological evidence must be considered when determining the ordinary high water mark. The state engineer shall establish appropriate guidelines, technical standards, and other criteria, including use of light detection and ranging systems or other future technological advancements, as necessary, for conducting hydrologic and hydraulic modeling required by this section.
3. Secondary physical indicators, including litter, debris, or staining, may be considered to supplement the analysis of the ordinary high water mark investigation but may not supersede primary physical indicators unless primary physical indicators are deemed inadequate or inconclusive. Physical indicators directly affected by influent non-navigable tributaries, adjoining water bodies, or wetlands may not be used to delineate the sovereign land boundary of a navigable body of water.

**SECTION 3. AMENDMENT.** Section 61-33.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-33.1-02. Mineral ownership of land ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams. (Retroactive application - [See note](#))**

The state sovereign land mineral ownership of the riverbed segments ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams extends only to the historical Missouri riverbed channel up to the ordinary high water mark. The state holds no claim or title to any minerals above the ordinary high water mark of the historical Missouri riverbed channel ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams, except for original grant lands acquired by the state under federal law and any minerals acquired by the state through purchase, foreclosure, or other written conveyance. Mineral ownership of the riverbed segments ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams which are located within the exterior boundaries of the Fort Berthold reservation and Standing Rock Indian reservation is controlled by other law and is excepted from this section.

<sup>254</sup> **SECTION 4. AMENDMENT.** Subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>254</sup> Section 61-33.1-03 was also amended by section 3 of House Bill No. 1202, chapter 513.

- e. Subsection 34 of section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner.

**SECTION 5.** A new subsection to section 61-33.1-03 of the North Dakota Century Code is created and enacted as follows:

Upon adoption of the final review findings by the industrial commission, the board of university and school lands may contract with a qualified engineering and surveying firm to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission. The acreage determination is final upon approval by the board.

**SECTION 6. AMENDMENT.** Section 61-33.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-33.1-04. Implementation. (Retroactive application - [See note](#))**

1. Within six months after the adoption of the final review findings acreage determination by the industrial commission board of university and school lands:
  - a. Any royalty proceeds held by operators attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey must be released to the owners of the tracts, absent a showing of other defects affecting mineral title; and
  - b. Any royalty proceeds held by the board of university and school lands attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey must be released to the relevant operators to distribute to the owners of the tracts, absent a showing of other defects affecting mineral title.
2. Upon adoption of the final review findings acreage determination by the industrial commission board of university and school lands:
  - a. The board of university and school lands shall begin to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases. The board shall complete the adjustments, refunds, and payment demands within two years after the date of adoption of the final review findings approving the acreage determination.
  - b. Operators of oil and gas wells affected by the final review findings final acreage determination immediately shall begin to implement any acreage and revenue adjustments relating to state-owned and privately owned oil

and gas interests. The operators shall complete the adjustments within two years after the date of adoption of the review findings the board approves the acreage determination. Any applicable penalties, liability, or interest for late payment of royalties or revenues from an affected oil or gas well may not begin to accrue until the end of the two-year deadline. The filing of an action under section 61-33.1-05 tolls the deadline for any oil and gas well directly affected by the action challenging the review finding or final acreage determination.

**SECTION 7. AMENDMENT.** Section 61-33.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-33.1-05. Actions challenging review findings or final acreage determinations. (Retroactive application - See note)**

1. An interested party seeking to bring an action challenging the review findings or recommendations or the industrial commission actions under this chapter shall commence an action in district court within two years of the date of adoption of the final review findings by the industrial commission. The plaintiff bringing an action under this section may challenge only the final review finding for the section or sections of land in which the plaintiff asserts an interest. The state and all owners of record of fee or leasehold estates or interests affected by the finding, recommendation, or industrial commission action challenged in the action under this section must be joined as parties to the action. A plaintiff or defendant claiming a boundary of the ordinary high water mark of the historical Missouri riverbed channel which varies from the boundary determined under this chapter bears the burden of establishing the variance by clear and convincing evidence based on evidence of the type required to be considered by the engineering and surveying firm under subsection 3 of section 61-33.1-03.
2. An interested party seeking to bring an action challenging the final acreage determination under this chapter shall commence an action in district court within two years of the date the acreage determinations were approved by the board of university and school lands. The plaintiff bringing an action under this section may challenge only the acreage determination for the section or sections of land in which the plaintiff asserts an interest. The state and all owners of record of fee or leasehold estates or interests affected by the final acreage determination challenged in the action under this section must be joined as parties to the action. A plaintiff or defendant claiming a determination of the acreage above or below the historical Missouri riverbed channel which varies from the final acreage determination under this chapter bears the burden of establishing the variance by clear and convincing evidence based on evidence of the type required to be considered by the engineering and surveying firm contracted by the board of university and school lands under subsection 2 of section 61-33.1-04.
3. Notwithstanding any other provision of law, an action brought in district court under this section is the sole remedy for challenging the final review, recommendations, and determination of the ordinary high water mark, and final acreage determination under this chapter, and preempts any right to rehearing, reconsideration, administrative appeal, or other form of civil action provided under law.

**SECTION 8. AMENDMENT.** Section 61-33.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-33.1-07. State engineer regulatory jurisdiction. (Retroactive application - [See note](#))**

This chapter does not affect the authority of the state engineer to regulate the historical Missouri riverbed channel, minerals other than oil and gas, or the waters of the state, provided the regulation does not affect ownership of oil and gas minerals in and under the riverbed or lands above the ordinary high water mark of the historical Missouri riverbed channel ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams.

**SECTION 9. APPLICATION.** Sections 1 and 2 of this Act do not apply to the ordinary high water mark study required for the historical Missouri riverbed channel in chapter 61-33.1. This Act does not affect or limit the authority of the state engineer to regulate waters of this state.

**SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 515

### HOUSE BILL NO. 1085

(Agriculture Committee)  
(At the request of the State Water Commission)

AN ACT to amend and reenact section 61-34-04 of the North Dakota Century Code, relating to the drought disaster livestock water assistance program; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 61-34-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-34-04. Eligibility - Application for assistance.**

Applicants with livestock water supply problems caused by drought may apply for assistance from the program. An applicant must first apply for water cost-share assistance from the United States department of agriculture farm service agency. If cost-share assistance is denied by the agency, the applicant may forward the application to the commission for consideration. An application forwarded to the commission must include a document from the United States department of agriculture farm service agency stating the reason for denial of cost-share assistance. The state engineer shall review all applications received by the commission. Notwithstanding any other provision of law, a water supply project commenced after application for funding is made but without prior approval of the state engineer is eligible for funding consideration from the program. ~~If the state engineer approves an application, the applicant may receive up to fifty percent of the cost but in no event more than three thousand five hundred dollars per project with a limit of three projects per applicant.~~ The state engineer shall provide funds for approved applications in accordance with rules and criteria for eligibility and only to the extent that funding is available. A drought disaster livestock water assistance program project located on Indian land is eligible for the program.

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

Approved March 8, 2019

Filed March 8, 2019



# WEAPONS

## CHAPTER 516

### SENATE BILL NO. 2034

(Legislative Management)  
(Judiciary Committee)

AN ACT to create and enact a new subsection to section 62.1-02-01, a new subsection to section 62.1-02-05, and a new subsection to section 62.1-02-10 of the North Dakota Century Code, relating to the possession of firearms; to amend and reenact subsection 1 of the new section to chapter 62.1-02 of the North Dakota Century Code as created by section 1 of House Bill No. 1332, as approved by the sixty-sixth legislative assembly, relating to the carrying of a concealed firearm on school property by qualified individuals; to amend and reenact subsections 3 and 7 of section 62.1-01-01, subsection 1 of section 62.1-02-01.1, subsection 1 of section 62.1-02-05, subdivision l of subsection 2 of section 62.1-02-05, section 62.1-02-07, subdivision a of subsection 6 of section 62.1-02-13, and sections 62.1-03-01 and 62.1-04-02 of the North Dakota Century Code, relating to the possession of firearms; and to provide a penalty.

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

<sup>255</sup> **SECTION 1. AMENDMENT.** Subsections 3 and 7 of section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Firearm" or "weapon" means any device ~~which will expel~~that expels or is readily capable of expelling; a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon. ~~For a felon who is not sentenced under section 12.1-32-09.1, the term does not include a firearm or weapon that is a rifle that has a barrel sixteen inches [40.64 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:~~
  - a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.
  - b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

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<sup>255</sup> Section 62.1-01-01 was also amended by section 1 of House Bill No. 1308, chapter 517.

~~e. A muzzleloading rifle or muzzleloading shotgun that is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.~~

7. "Law enforcement officer" means:

a. A public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law; or

b. A retired public servant in good standing who:

(1) Was authorized by law or by a government agency or branch for at least ten years to enforce the law and to conduct or engage in investigations or prosecutions for violations of law or who was separated from service due to a service-related physical disability;

(2) Maintains the same level of firearms proficiency as is required by the peace officers standards and training board for law enforcement officers, maintains the standards for qualifications in firearms training for active law enforcement officers as determined by the former agency of the individual in the state in which the individual resides, or maintains the standards used by a certified firearms instructor qualified to conduct a firearms qualification test for active duty officers in the state in which the individual resides;

(3) Has a photo identification card issued by a local law enforcement agency which identifies the individual as having been employed by a government agency or branch as a law enforcement officer and indicates the individual has passed the firearms proficiency test within twelve months from the date of issue; and

(4) Has not been found by a qualified medical professional to be unqualified for reasons relating to mental health or entered an agreement with a government agency or branch in which the public servant acknowledges a lack of qualifications for reasons relating to the mental health of the public servant; ~~or~~

~~e. A retired public servant in good standing who:~~

~~(1) Was separated from service due to a service-related disability;~~

~~(2) Maintains the same level of firearms proficiency as is required by the peace officers standards and training board for law enforcement officers, maintains the standards for qualifications in firearms training for active law enforcement officers as determined by the former agency of the individual in the state in which the individual resides, or maintains the standards used by a certified firearms instructor qualified to conduct a firearms qualification test for active duty officers in the state in which the individual resides;~~

~~(3) Has a photo identification card issued by a local law enforcement agency which identifies the individual as having been employed by a government agency or branch as a law enforcement officer and~~

indicates the individual has passed the firearms proficiency test within twelve months from the date of issue; and

- ~~(4) Has not been found by a qualified medical professional to be unqualified for reasons relating to mental health or entered an agreement with a government agency or branch in which the public servant acknowledges a lack of qualifications for reasons relating to the mental health of the public servant.~~

<sup>256</sup> **SECTION 2. AMENDMENT.** Subsection 1 of the new section to chapter 62.1-02 of the North Dakota Century Code as created by section 1 of House Bill No. 1332, as approved by the sixty-sixth legislative assembly, is amended and reenacted as follows:

1. The superintendent of public instruction, in consultation with the department of emergency services and the attorney general, shall adopt rules to administer this section and develop criteria for approval of plans under this section.

**SECTION 3.** A new subsection to section 62.1-02-01 of the North Dakota Century Code is created and enacted as follows:

A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:

- a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.
- b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.
- c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or a black powder substitute and which cannot use fixed ammunition.

**SECTION 4. AMENDMENT.** Subsection 1 of section 62.1-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual ~~who is~~ prohibited from possessing a firearm due to a conviction of a felony under subdivision b of subsection 1 of section 62.1-02-01 may petition the district court for restoration of the individual's firearm rights. If the felony offense was committed in this state, the petition must be filed with the district court in the county where the offense occurred. If the offense was a felony of another state or the federal government, the petition must be filed ~~with the district court in the county where the petitioner resides~~ in the venue where the rights of the individual were revoked. A copy of the petition must be served on the state's attorney's office in the county where the petition is filed in accordance with Rule 5 of the North Dakota Rules of Civil Procedure. The state's attorney's office ~~shall have~~ has twenty days to file a written response to the petition with the district court.

257 **SECTION 5.** A new subsection to section 62.1-02-05 of the North Dakota Century Code is created and enacted as follows:

This section does not prevent the governing body of a school or the entity exercising control over a publicly owned or operated building or property from authorizing the use of a less than lethal weapon as part of the security plan for the school, building, or property.

258 **SECTION 6. AMENDMENT.** Subsection 1 of section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual who knowingly possesses a firearm or dangerous weapon at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" means an athletic or sporting event, a school, a church or other place of worship, and a publicly owned or operated building.

259 **SECTION 7. AMENDMENT.** Subdivision I of subsection 2 of section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

- I. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a firearm or dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship;

**SECTION 8. AMENDMENT.** Section 62.1-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**62.1-02-07. Use of firearm by certain minors prohibited - Penalty.**

Any parent, guardian, or other person having charge or custody authorized by the parent or guardian of any minor under fifteen years of age who permits that minor to carry or use in public any firearm of any description loaded with powder and projectile, except when the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian in public, is guilty of a class B misdemeanor. This section does not apply if the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian.

257 Section 62.1-02-05 was also amended by section 1 of House Bill No. 1042, chapter 520, section 2 of House Bill No. 1163, chapter 519, section 2 of House Bill No. 1332, chapter 521, section 6 of Senate Bill No. 2034, chapter 516, and section 7 of Senate Bill No. 2034, chapter 516.

258 Section 62.1-02-05 was also amended by section 1 of House Bill No. 1042, chapter 520, section 2 of House Bill No. 1163, chapter 519, section 2 of House Bill No. 1332, chapter 521, section 5 of Senate Bill No. 2034, chapter 516, and section 7 of Senate Bill No. 2034, chapter 516.

259 Section 62.1-02-05 was also amended by section 1 of House Bill No. 1042, chapter 520, section 2 of House Bill No. 1163, chapter 519, section 2 of House Bill No. 1332, chapter 521, section 5 of Senate Bill No. 2034, chapter 516, and section 6 of Senate Bill No. 2034, chapter 516.

<sup>260</sup> **SECTION 9.** A new subsection to section 62.1-02-10 of the North Dakota Century Code is created and enacted as follows:

An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and who has possessed for at least one year a valid driver's license or nondriver identification card issued by the department of transportation.

**SECTION 10. AMENDMENT.** Subdivision a of subsection 6 of section 62.1-02-13 of the North Dakota Century Code is amended and reenacted as follows:

- a. Any public or nonpublic elementary school, middle school, or high school property, except as otherwise provided in subsection 2 of section 62.1-02-05.

**SECTION 11. AMENDMENT.** Section 62.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**62.1-03-01. Carrying handgun - RestrictionsLimitations - Exceptions.**

1. ~~A handgun may not be carried unless by an individual not otherwise prohibited and~~Unless otherwise prohibited by law, an individual may carry a handgun if:
  - a. ~~Between the hours of one hour before sunrise and one hour after sunset, the handgun is unloaded and either in plain view or secured~~The handgun is unloaded, in plain view or secured, and between the hours of one hour before sunrise and one hour after sunset.
  - b. ~~Between the hours of one hour after sunset and one hour before sunrise, the handgun is unloaded and secured~~The handgun is unloaded and secured and between the hours of one hour after sunset and one hour before sunrise.
2. ~~The restrictions provided in subdivisions~~A limitation under subdivision a and/or b of subsection 1 ~~does~~ not apply to:
  - a. An individual possessing a valid concealed weapons license from this state, an individual not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and who has possessed for at least one year a valid driver's license or nondriver identification card issued by the department of transportation, or an individual who has reciprocity under section 62.1-04-03.1.
  - b. An individual on that person's land, or in that individual's permanent or temporary residence, or fixed place of business.
  - c. An individual while lawfully engaged in target shooting.
  - d. An individual while in the field engaging in the lawful pursuit of hunting or trapping. However, nothing in this exception authorizes the carrying of a loaded handgun in a motor vehicle.

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<sup>260</sup> Section 62.1-02-10 was also amended by section 3 of House Bill No. 1042, chapter 520, and section 3 of House Bill No. 1163, chapter 519.

- e. An individual permitted by law to possess a firearm while carrying the handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair or back from those locations.
- f. Any North Dakota law enforcement officer.
- g. Any law enforcement officer of any other state or political subdivision of another state if on official duty within this state.
- h. Any armed security guard or investigator as authorized by law when on duty or going to or from duty.
- i. Any member of the armed forces of the United States when on duty or going to or from duty and when carrying the handgun issued to the member.
- j. Any member of the national guard, organized reserves, state defense forces, or state guard organizations, when on duty or going to or from duty and when carrying the handgun issued to the member by the organization.
- k. Any officer or employee of the United States duly authorized to carry a handgun.
- l. An individual engaged in manufacturing, repairing, or dealing in handguns or the agent or representative of that individual possessing, using, or carrying a handgun in the usual or ordinary course of the business.
- m. Any common carrier, but only when carrying the handgun as part of the cargo in the usual cargo carrying portion of the vehicle.
- ~~n. An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and has possessed for at least one year a valid driver's license or nondriver identification card issued by the department of transportation.~~

**SECTION 12. AMENDMENT.** Section 62.1-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**62.1-04-02. Carrying concealed firearms or dangerous weapons - License distinctions.**

1. An individual, other than a law enforcement officer, may not carry a firearm or dangerous weapon concealed unless the individual is licensed to do so or exempted under this chapter.
2. An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under this chapter and who has possessed for at least one year a valid driver's license or nondriver identification card issued by the department of transportation may carry a firearm concealed under this chapter.
3. For purposes of this chapter, the difference between a class 1 and class 2 firearm and dangerous weapon license is only the extent to which a holder of either license may be eligible to receive reciprocal rights in other jurisdictions. A class 1 firearm and dangerous weapon licenseholder is eligible to receive

reciprocal rights in more jurisdictions than a class 2 firearm and dangerous weapon licenseholder. The rights and privileges conveyed by a class 1 or class 2 firearm and dangerous weapon license within the state are identical.

Approved April 18, 2019

Filed April 19, 2019

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## CHAPTER 517

### HOUSE BILL NO. 1308

(Representatives M. Ruby, Hoverson, Johnston, Marschall, Paulson, Porter, D. Ruby)  
(Senators Hogue, O. Larsen, Vedaa)

AN ACT to amend and reenact subsection 8 of section 62.1-01-01 relating to the definition of machine gun, submachine gun, or fully automatic rifle.

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

<sup>261</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second. The term does not include a binary trigger that fires one round upon the pull of the trigger and one round upon release of the trigger.

Approved April 8, 2019

Filed April 9, 2019

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<sup>261</sup> Section 62.1-01-01 was also amended by section 1 of Senate Bill No. 2034, chapter 516.



## CHAPTER 518

### HOUSE BILL NO. 1381

(Representatives Simons, Becker, Ertelt, Johnston, Jones, Kasper, B. Koppelman, K. Koppelman, McWilliams, D. Ruby, M. Ruby)  
(Senator O. Larsen)

AN ACT to create and enact a new section to chapter 62.1-01 of the North Dakota Century Code, relating to a restriction on firearm buyback programs; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 62.1-01 of the North Dakota Century Code is created and enacted as follows:

##### **Firearm buyback program - Prohibited.**

1. As used in this section, "firearm buyback program" means a program to purchase privately owned firearms, firearm parts, or ammunition from private individuals or organizations for the purpose of providing cash, gifts, or vouchers; or reducing the number of firearms, firearm parts, or ammunition owned by civilians; or permitting a civilian to sell a firearm to the government without fear of prosecution. The term does not include the purchase of firearms, firearm parts, or ammunition from a licensed firearms dealer, or a program to purchase firearms, firearm parts, or ammunition for law enforcement purposes.
2. A state agency, political subdivision, or any law enforcement agency of this state may not conduct a firearm buyback program or participate in the implementation, administration, or operation of a firearm buyback program.
3. A state agency, political subdivision, or any law enforcement agency of this state may not expend any taxpayer dollars for the purpose of implementing, administering, or otherwise operating a firearm buyback program.
4. A violation of this section is a class A misdemeanor.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 519

### HOUSE BILL NO. 1163

(Representatives B. Koppelman, Ertelt, Johnston, Karls, K. Koppelman, Magrum)  
(Senators Luick, Myrdal)

AN ACT to amend and reenact subsection 1 of section 62.1-02-04, subsection 1 of section 62.1-02-05, and section 62.1-02-10 of the North Dakota Century Code, relating to the possession of firearms or dangerous weapons; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 62.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual who enters or remains in that part of the establishment that is set aside for the retail sale of alcoholic beverages and the consumption of purchased alcoholic beverages or used as a gaming site at which bingo is the primary gaming activity while that individual knowingly possesses a firearm or dangerous weapon is guilty of a ~~class A misdemeanor~~ infraction. In addition, an individual is guilty of an offense under this section for the knowing possession of a device that uses a projectile and voltage or a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident in the part of an establishment that is set aside for the retail sale and consumption of alcoholic beverages.

<sup>262</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual who knowingly possesses a firearm or dangerous weapon at a public gathering is guilty of a ~~class B misdemeanor~~ infraction. For the purpose of this section, "public gathering" means an athletic or sporting event, a school, a church, and a publicly owned or operated building.

<sup>263</sup> **SECTION 3. AMENDMENT.** Section 62.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **62.1-02-10. Carrying loaded firearm in certain vehicles prohibited - Penalty - Exceptions.**

An individual may not keep or carry a loaded firearm in or on any motor vehicle, including an off-highway vehicle or snowmobile in this state. An individual violating this section is guilty of a ~~class B misdemeanor~~ infraction. This prohibition does not apply to:

<sup>262</sup> Section 62.1-02-05 was also amended by section 1 of House Bill No. 1042, chapter 520, section 2 of House Bill No. 1332, chapter 521, section 5 of Senate Bill No. 2034, chapter 516, section 6 of Senate Bill No. 2034, chapter 516, and section 7 of Senate Bill No. 2034, chapter 516.

<sup>263</sup> Section 62.1-02-10 was also amended by section 3 of House Bill No. 1042, chapter 520, and section 9 of Senate Bill No. 2034, chapter 516.

1. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.
2. A law enforcement officer.
3. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 with a handgun, or with a rifle or shotgun if not in the field hunting or trapping.
4. An individual in the field engaged in lawful hunting or trapping of nongame species or fur-bearing animals.
5. A security guard or private investigator properly licensed to carry firearms.
6. An individual possessing a valid special permit issued pursuant to section 20.1-02-05.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 520

### HOUSE BILL NO. 1042

(Representative Porter)

AN ACT to create and enact a new subsection to section 62.1-02-10 of the North Dakota Century Code, relating to possession of a loaded firearm in a vehicle; to amend and reenact subdivision 1 of subsection 2 of section 62.1-02-05 and subsection 4 of section 62.1-02-05 of the North Dakota Century Code, relating to possessing a firearm or dangerous weapon in a church; to provide a penalty; and to declare an emergency.

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

<sup>264</sup> **SECTION 1. AMENDMENT.** Subdivision 1 of subsection 2 of section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

- I. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a firearm or dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship;

**SECTION 2. AMENDMENT.** Subsection 4 of section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

4. Notwithstanding any other provision of law, a church or place of worship may not be held liable for any injury or death or damage to property caused by an individual permitted to carry a firearm or dangerous weapon concealed under this section.

<sup>265</sup> **SECTION 3.** A new subsection to section 62.1-02-10 of the North Dakota Century Code is created and enacted as follows:

An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and has possessed for at least one year a valid driver's license or nondriver identification card issued by the department of transportation.

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

Approved April 8, 2019

Filed April 9, 2019

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<sup>264</sup> Section 62.1-02-05 was also amended by section 2 of House Bill No. 1163, chapter 519, section 2 of House Bill No. 1332, chapter 521, section 5 of Senate Bill No. 2034, chapter 516, section 6 of Senate Bill No. 2034, chapter 516, and section 7 of Senate Bill No. 2034, chapter 516.

<sup>265</sup> Section 62.1-02-10 was also amended by section 3 of House Bill No. 1163, chapter 519, and section 9 of Senate Bill No. 2034, chapter 516 .

## CHAPTER 521

### HOUSE BILL NO. 1332

(Representatives Heinert, Johnston, Marschall, Porter, D. Ruby)  
(Senators D. Larson, Luick, Myrdal, Oehlke)

AN ACT to create and enact a new section to chapter 62.1-02 of the North Dakota Century Code, relating to the carrying of a concealed firearm on school property by qualified individuals; and to amend and reenact subsection 2 of section 62.1-02-05 of the North Dakota Century Code, relating to an exception to the prohibition against possessing a firearm at a public gathering.

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

<sup>266</sup> **SECTION 1.** A new section to chapter 62.1-02 of the North Dakota Century Code is created and enacted as follows:

#### **Armed first responder in schools - Possession of a concealed weapon - Liability.**

1. The superintendent of public instruction shall adopt rules to administer this section and develop criteria for approval of plans under this section.
2. The superintendent of public instruction may accept a proposal from a public school, upon approval by the school board or governing board, indicating the intention by the school to participate in an armed first responder program.
3. Within ninety days of informing the superintendent of public instruction of the intent to participate in the program, the school shall:
  - a. Identify the individual selected by the school to participate in the program and attend training to become the school's armed first responder;
  - b. Submit a plan to the superintendent of public instruction specifying how the school will implement the program; and
  - c. Participate in a comprehensive emergency operations assessment for the purpose of identifying school crisis and emergency threats and risks.
4. The plan submitted by the school to the superintendent of public instruction is a security system plan as defined in section 44-04-24 and a public health and security plan as defined in section 44-04-25. The plan continues to be an exempt record after the required disclosures of the plan under this section.
5. The plan submitted by the school to the superintendent of public instruction must show response time from law enforcement.

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<sup>266</sup> Section 62.1-02-14 was amended by section 2 of Senate Bill No. 2034, chapter 516.

6. The plan submitted by the school to the superintendent of public instruction must be approved by local law enforcement and the department of homeland security.
7. The plan submitted by the school to the superintendent of public instruction must require the selected individual to complete training equivalent to the South Dakota school sentinel program as established on August 1, 2019, or complete the course established by the private investigative and security board.
8. An individual selected to become an armed first responder for a school participating in the program:
  - a. Must be a retired law enforcement officer or meet the requirements of subsection 7;
  - b. Must be a citizen of the United States;
  - c. Must be at least twenty-one years old;
  - d. Shall complete a criminal background check successfully and be approved by the local law enforcement agencies with jurisdiction over the school premises where the individual will be an armed first responder;
  - e. Must be a high school graduate or meet equivalency standards;
  - f. Shall complete successfully a physical performed by a physician or an advanced practice registered nurse and a mental evaluation by a qualified mental health provider who certifies the individual is capable of performing the duties of an armed first responder;
  - g. Shall complete successfully a faculty and administrator safety training and emergency response program in addition to the requirements under subsection 7;
  - h. Must be approved by the school board or governing board to carry a firearm concealed on school property;
  - i. Shall possess a valid class 1 firearm license from this state; and
  - j. May not be directly responsible for the supervision of children while serving as an armed first responder.
9. An individual selected to become an armed first responder at a school participating in the program shall cooperate in training with local law enforcement for school emergencies to provide a coordinated response to building lockdown and active killer events. The individual shall attend annual training and recertification courses consisting of a minimum of ten hours of instruction and a skills evaluation assessment.
10. The school board or governing board of any school participating in the program shall inform local law enforcement, in writing, of the name of the individual authorized by the school to participate in the program.

11. The school board or governing board of any school participating in the program shall ensure the district participates in annual active shooter training.
12. An individual selected as an armed first responder may not carry a firearm concealed or a dangerous weapon on school premises unless:
  - a. The individual has been approved by the school board or governing board under subsection 8;
  - b. The individual has completed the armed first responder curriculum requirements under subsections 7 and 8; and
  - c. The individual completes the armed first responder recertification course requirements every twelve months.
13. A firearm or dangerous weapon carried by an armed first responder on school premises must remain concealed and under the direct control of the certified armed first responder or stored in a lockbox accessible only by the armed first responder.
14. The school board or governing board shall approve a posttraumatic stress disorder treatment program for armed first responders.
15. The school board or governing board may withdraw a school from participation in the program at any time.
16. A school participating in the program shall provide program evaluation data to the superintendent of public instruction at the time and in the manner requested by the superintendent of public instruction.
17. The board of a school district or the governing body of a nonpublic school may establish a program for providing a plan to establish a school first responder which includes authorizing an individual to conceal and carry a weapon if the individual has received education and training in accordance with this section.
18. A staff member may choose not to function in the capacity of a school first responder.
19. An individual authorized to work as a first responder under subsection 17, a school district, the board of a school district, or the governing body of a nonpublic school that establishes a first responder program is not civilly or criminally liable for any act or omission of the first responder if the first responder is acting in good faith while providing protection to a student or the school, except if the first responder's conduct amounts to gross negligence.

<sup>267</sup> **SECTION 2. AMENDMENT.** Subsection 2 of section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

2. This section does not apply to:

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<sup>267</sup> Section 62.1-02-05 was also amended by section 1 of House Bill No. 1042, chapter 520, section 2 of House Bill No. 1163, chapter 519, section 5 of Senate Bill No. 2034, chapter 516, section 6 of Senate Bill No. 2034, chapter 516, and section 7 of Senate Bill No. 2034, chapter 516.

- a. A law enforcement officer, or a correctional officer employed by the department of corrections and rehabilitation or by a correctional facility governed by chapter 12-44.1. A correctional officer employed by the department of corrections and rehabilitation may carry a firearm only as authorized in section 12-47-34. A correctional officer employed by a correctional facility governed by chapter 12-44.1 may carry a firearm or dangerous weapon only as authorized in section 12-44.1-30;
- b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
- c. A competitor participating in an organized sport shooting event;
- d. A gun or antique show;
- e. A participant using a blank cartridge firearm at a sporting or theatrical event;
- f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;
- g. A student and an instructor at a hunter safety class;
- h. Private and public security personnel while on duty;
- i. A state or federal park;
- j. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question;
- k. An individual in a publicly owned or operated rest area or restroom;
- l. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship;
- m. A state, federal, or municipal court judge, a district court magistrate judge or judicial referee, and a staff member of the office of attorney general if the individual maintains the same level of firearms proficiency as is required by the peace officer 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; and
- n. An individual's storage of a firearm or dangerous weapon in a building that is owned or managed by the state or a political subdivision, provided:



- (1) The individual resides in the building;
  - (2) The storage is inside the individual's assigned residential unit; and
  - (3) The storage has been consented to by the state, the governing board, or a designee; and
- o. An individual authorized to carry a concealed weapon on school property under section 1 of this Act.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 522

### SENATE BILL NO. 2140

(Senators O. Larsen, Kannianen, Myrdal, Vedaa)  
(Representatives Becker, D. Ruby)

AN ACT to amend and reenact section 62.1-04-04 of the North Dakota Century Code, relating to producing a concealed weapon license upon request; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 62.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **62.1-04-04. Producing license ~~on demand~~upon request - Penalty.**

1. Every individual while carrying a concealed firearm or dangerous weapon, for which a license to carry concealed is required, shall have on one's person the license issued by this or another state or a digital image of one's concealed firearm or dangerous weapon license issued by this state on an electronic device and shall give it to any active law enforcement officer for an inspection upon demandrequest by the officer. The failure of any individual to give the license or digital image of the license to the officer is prima facie evidence the individual is illegally carrying a firearm or dangerous weapon concealed.
2. Every individual carrying a concealed firearm under the authority granted in subsection 2 of section 62.1-04-02 shall inform a law enforcement officer of the individual's possession of a concealed weapon upon the initiation of a traffic stop or any other in-person contact initiated by a law enforcement officer.
3. Every individual carrying a concealed firearm under the authority granted in subsection 2 of section 62.1-04-02 must have on one's person a valid driver's license or nondriver identification card issued by the department of transportation or a digital image of one's valid driver's license or nondriver identification card on a mobile device and shall provide the license or card to any law enforcement officer for inspection upon demandrequest by the officer.
4. An individual who violates this section is guilty of a noncriminal offense punishable by a fee of twenty dollars.

Approved April 25, 2019

Filed April 26, 2019

# WORKFORCE SAFETY AND INSURANCE

## CHAPTER 523

### SENATE BILL NO. 2184

(Senators J. Lee, Hogan, Klein)  
(Representatives P. Anderson, Keiser, Rohr)

AN ACT to amend and reenact subsection 7 of section 23-07.5-02, sections 65-01-02, 65-01-11, 65-01-15, 65-02-20, 65-02-21.1, 65-05-07, 65-05-08.1, and 65-05-08.3, subsections 5 and 12 of section 65-05-12.2, section 65-05-28, subsection 2 of section 65-05-29, section 65-05-30, subsection 3 of section 65-05-32, subsection 5 of section 65-05.1-01, subsection 6 of section 65-05.1-02, and subsection 1 of section 65-07-03 of the North Dakota Century Code, relating to the definition of allied health care professional and health care provider with respect to workers' compensation claims and benefits.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

7. The exposed individual shall pay the expense of testing. However, if the exposure occurs at an employee's workplace, the worker's employer shall pay the expense of testing unless otherwise provided by subdivision b of subsection ~~4011~~ of section 65-01-02. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, a court may order the individual to be tested to pay for the testing.

<sup>268</sup> **SECTION 2. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **65-01-02. Definitions.**

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.

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<sup>268</sup> Section 65-01-02 was also amended by section 1 of House Bill No. 1072, chapter 524, section 1 of House Bill No. 1073, chapter 525, and section 137 of Senate Bill No. 2124, chapter 391.

3. "Allied health care professional" includes a health care provider, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner who provides skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
4. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
- 4-5. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
- 5-6. "Average weekly wage" means the weekly wages the employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:
  - a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
  - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
  - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
  - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
  - e. Biweekly rate divided by two.
  - f. The usual wage paid other employees engaged in similar occupations.
  - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.
- 6-7. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
- 7-8. "Board" means the workforce safety and insurance board of directors.

- 8-9. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
- 9-10. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and does not reside with the employee; or is under eighteen years of age and does not reside with the employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the employee for support. A child does not include a married child unless actually dependent on the employee as shown on the preceding year's income tax returns.
- 10-11. "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.
  - (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 pre-exist 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 organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment 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 pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.
- (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.

44-12. "Date of first disability" means the first date the employee was unable to work because of a compensable injury.

~~42-13.~~ "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.

~~43-14.~~ "Director" means the director of the organization.

~~44-15.~~ "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.

~~15.~~ "~~Doctor~~" means ~~doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.~~

16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

a. The term includes:

(1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.

(2) Aliens.

(3) County general assistance workers, except those who are engaged in repaying to counties moneys the counties have been compelled by statute to expend for county general assistance.

(4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

(1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.

(2) An individual who is engaged in an illegal enterprise or occupation.

(3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.

(4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:

- (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
  - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
  - (c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.
- (7) An employer.
17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
- a. The state and all political subdivisions thereof.
  - b. All public and quasi-public corporations in this state.
  - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
  - d. The legal representative of any deceased employer.
  - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
  - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
  - g. The managers of a limited liability company.
  - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.



- i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
  - j. A multidistrict special education unit.
  - k. An area career and technology center.
  - l. A regional education association.
18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
  - a. Agricultural or domestic service.
  - b. Any employment of a common carrier by railroad.
  - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
  - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
21. ~~"Health care provider" includes a doctor, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals~~means a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.
22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
23. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
24. "Parent" includes a stepparent and a parent by adoption.

25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
26. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an employee from performing any work and results from any one of the following conditions:
  - a. Total and permanent loss of sight of both eyes;
  - b. Loss of both legs or loss of both feet at or above the ankle;
  - c. Loss of both arms or loss of both hands at or above the wrist;
  - d. Loss of any two of the members or faculties in subdivision a, b, or c;
  - e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
  - f. Third-degree burns that cover at least forty percent of the body and require grafting;
  - g. A medically documented brain injury affecting cognitive and mental functioning which renders an employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
  - h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the employee has not reached maximum medical improvement within one hundred four weeks, the employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
28. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
30. "Temporary total disability" means disability that results in the inability of an employee to earn wages as a result of a compensable injury for which

disability benefits may not exceed a cumulative total of one hundred four weeks or the date the employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.

31. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
32. a. "Wages" means:
  - (1) An employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes.
  - (2) For members of the national guard who sustain a compensable injury while on state active duty, "wages" includes income from federal employment and may be included in determining the average weekly wage.
  - (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.
- b. The organization may consider postinjury wages for which coverage was not required or otherwise secured in North Dakota for purposes of determining appropriate vocational rehabilitation options or entitlement to disability benefits under this title.

**SECTION 3. AMENDMENT.** Section 65-01-11 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-11. Burden of proof in compensation matters - Death certificate.**

If the organization or an employer claims that an employee is not entitled to the benefits of the North Dakota workforce safety and insurance law because the employee's injury was caused by the employee's willful intention to cause self-injury, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving the exemption or forfeiture is ~~upon~~ the organization or ~~upon~~ the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in the Code of Federal Regulations in effect on August 1, 2011, or a level of an illegally used controlled substance sufficient to cause impairment found by a test conducted by a physician, qualified technician, chemist, or registered nurse at or above the cutoff level in the Code of Federal Regulations in effect on August 1, 2011, creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer who has a mandatory drug alcohol testing policy for work accidents, or an employer or a ~~doctor~~health care provider who has

reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired or if an employee refuses to submit to a test for drugs or alcohol after a work accident as mandated by company policy, the employee forfeits all entitlement to workforce safety and insurance benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to benefits. If a claim for death benefits is filed, the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.

**SECTION 4. AMENDMENT.** Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15. Yearly documentation required for firefighter and law enforcement officer.**

Except for benefits for an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under section 65-01-15.1, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician health care provider which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years.

**SECTION 5. AMENDMENT.** Section 65-02-20 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-20. Organization to establish managed care program.**

The organization shall establish a managed care program, including utilization review and bill review, to effect the best medical solution for an injured employee in a cost-effective manner upon a finding by the organization that the employee suffered a compensable injury. The program shall operate according to guidelines adopted by the organization and shall provide for medical management of claims within the bounds of workforce safety and insurance law. Information compiled and analysis performed pursuant to a managed care program which relate to patterns of treatment, cost, or outcomes by health care providers and allied health care professionals are confidential and are not open to public inspection to the extent the information and analysis identify a specific health care provider or allied health care professional, except to the specific health care provider, allied health care professional, organization employees, or persons rendering assistance to the organization in the administration of this title. If an employee, employer, or ~~medical provider~~allied health care professional disputes a managed care decision, the employee, employer, or ~~medical provider~~allied health care professional shall request binding dispute resolution on the decision. The organization shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section 65-01-16. A dispute resolution decision under this section requested by a ~~medical provider~~an allied health care professional concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section

requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion in the dispute resolution process. Any person providing binding dispute resolution services under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

<sup>269</sup> **SECTION 6. AMENDMENT.** Section 65-02-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-21.1. Licensure required for psychologists and physicians performing utilization review.**

Psychologists making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. ~~Physicians~~ Health care providers making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the ~~North Dakota board of medicine~~ appropriate North Dakota licensing board. This requirement does not apply to psychologists or ~~physicians~~ health care providers conducting independent medical examinations or independent medical reviews under section 65-05-28.

**SECTION 7. AMENDMENT.** Section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-07. Injured employee given medical and hospital service required - Furnished artificial limbs and appliances for rehabilitation - Fee approval.**

The fund shall furnish to an injured employee reasonable and appropriate medical, surgical, and hospital service and supplies necessary to treat a compensable injury. The fund may furnish artificial members and replacements the organization determines necessary to rehabilitate an injured employee.

1. ~~The health care provider or doctor~~ allied health care professional must be acting within the scope of the ~~provider's or doctor's~~ allied health care professional's license or fees will be denied.
2. Fees may not be approved for more than one ~~health care provider or doctor~~ allied health care professional in a case wherein which treatment is provided over the same period of time except for the services of a consulting doctor, assistant surgeon, or anesthetist or in an emergency.
3. The organization, in cooperation with professional organizations of ~~doctors and health care providers~~ allied health care professionals, shall establish a system of peer review to determine reasonableness of fees and payment denials for unjustified treatments, hospitalization, or visits. The ~~doctor or health care provider~~ allied health care professional may appeal adverse decisions of the organization in accordance with the medical aid rules adopted by the organization.
4. ~~Health care providers and doctors~~ An allied health care professional may not bill an injured employee for ~~any services~~ a service rendered as a result of the compensable work injury.

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<sup>269</sup> Section 65-02-21.1 was also amended by section 4 of House Bill No. 1073, chapter 525.

5. Under this section, the organization may modify real estate and may provide for adaptations and modifications to motor vehicles as follows:
  - a. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed seventy-five thousand dollars to provide permanent additions, remodeling, or adaptations to real estate it determines necessary. The dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subdivision does not allow the organization to purchase any real estate.
  - b. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed one hundred fifty thousand dollars to provide the most cost-effective, specially equipped motor vehicle or vehicle adaptations the organization determines medically necessary. The organization may establish factors to be used in determining whether a specially equipped motor vehicle or adaptation is necessary. Under this subdivision, the organization may not pay for insurance of or maintenance of the motor vehicle. Within the dollar limit and under this subdivision, the organization may pay for vehicle or adaptation replacement purchases. The dollar limit is for the life of the injured employee, regardless of any subsequent claim.
  - c. In the case of an injured employee who has not sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may provide the benefits under subdivisions a and b if the organization determines the benefits would be cost-effective and appropriate because of exceptional circumstances as determined by the organization.
6. If ~~a doctor or health care provider~~ an allied health care professional who has treated or provided services to an injured employee fails or refuses without just cause to file with the organization a report required by section 65-05-02, 65-05-08, or 65-05-08.1, within thirty days of examination, treatment, or provision of other services rendered in connection with a compensable work injury, or within thirty days of a request for the report made by the claimant, the claimant's representative, or the organization, the organization shall assess as a penalty a sum of one hundred dollars. Health care providers and ~~doctors~~ allied health care professionals may not bill an injured worker for ~~any~~ a penalty assessed by the organization under this subsection.
7. The filing of an accident report or the rendering of treatment to an injured worker who comes under the organization's jurisdiction constitutes acceptance of the organization's medical aid rules and compliance with ~~its~~ the organization's rules and fees.
8. The organization may not pay for:
  - a. Personal items ~~that~~ are for the injured employee's personal use or hygiene, including toothbrushes, slippers, shampoo, and soap.
  - b. A product or item including clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating ~~doctor or health care provider~~ allied health care professional.

- c. Furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating ~~doctor or health care provider~~ allied health care professional.
- d. Vitamins and food supplements except in those cases in which the injury causes severe dietary problems, the injury results in the employee's paraplegia or quadriplegia, or the employee becomes wheelchair-bound due to the injury.
- e. Eye examinations unless there is a reasonable potential for injury to the employee's eyes as a result of the injury.
- f. Private hospital or nursing home rooms except in cases of extreme medical necessity and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the employee will pay the difference in cost.
- g. Serological tests, including VDRL and RPR, or other tests for venereal disease or pregnancy, or any other routine tests unless clearly necessitated by the injury.
- h. Aids or programs primarily intended to help the employee lose weight or stop smoking unless ordered by the organization.
- i. Home gymnasium or exercise equipment unless ordered by the organization.
- j. Memberships or monthly dues to health clubs, unless ordered by the organization.
- k. Massage, unless ordered by the organization.
- l. Medical marijuana.

**SECTION 8. AMENDMENT.** Section 65-05-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-08.1. Verification of disability.**

1. An injured employee's ~~doctor~~ health care provider shall certify the period of disability and the extent of the injured worker's abilities and restrictions.
2. A ~~doctor~~ health care provider certifying disability shall include in the report filed with the organization:
  - a. The medical basis established by medical evidence supported by objective medical findings for the certification of disability;
  - b. Whether the employee is totally disabled, or, if the employee is not totally disabled, whether the employee is able to return to any employment, and a statement of the employee's restrictions and physical limitations; and
  - c. A professional opinion as to the expected length of, and reason for, the disability.

- ~~4-3.~~ A ~~doctor~~health care provider may not certify or verify past disability commencing more than sixty days before the ~~doctor's~~health care provider's examination of the employee.
- 3-4. The report must be filed on a form furnished by the organization, or on any other form acceptable to the organization.
- 4-5. The injured employee shall ensure that the required reports for any period of disability are filed.
- 5-6. Prior to the expiration of a period of disability certified by a ~~doctor~~health care provider, if a report certifying an additional period of disability has not been filed, or upon receipt of a report or other evidence indicating an injured employee who is receiving disability benefits has been or will be released to return to work, the organization shall send a notice to that employee of the organization's intention to discontinue benefits, including an explanation of the reason for discontinuing benefits, an explanation of the injured employee's right to respond, and the procedure for filing the required report or challenging the proposed action. Thereafter, if the required certification is not filed, the organization shall discontinue disability benefits, effective twenty-one days after the date the notice of intention to discontinue benefits is mailed or the date on which the injured employee actually returned to work, whichever occurs first.

**SECTION 9. AMENDMENT.** Section 65-05-08.3 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-08.3. Treating ~~doctor's~~health care provider's opinion.**

1. A presumption may not be established in favor of any ~~doctor's~~health care provider's opinion. The organization shall resolve conflicting medical opinions and in doing so the organization shall consider the following factors:
  - a. The length of the treatment relationship and the frequency of examinations;
  - b. The nature and extent of the treatment relationship;
  - c. The amount of relevant evidence in support of the opinion;
  - d. How consistent the opinion is with the record as a whole;
  - e. Appearance of bias;
  - f. Whether the ~~doctor~~health care provider specializes in the medical issues related to the opinion; and
  - g. Other relevant factors.
2. This section does not apply to managed care programs under section 65-02-20. For purposes of this section, the organization shall determine whether a ~~doctor~~health care provider is an injured employee's treating ~~doctor~~health care provider.

**SECTION 10. AMENDMENT.** Subsection 5 of section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:



5. A doctor health care provider evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The organization shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Subject to rules adopted under this subsection, impairments must be evaluated under the sixth edition of the guides.

**SECTION 11. AMENDMENT.** Subsection 12 of section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

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 health care provider who has not treated the employee and who has not been consulted by the organization in relation to the injury upon which the impairment is based. The organization shall establish a list of doctors health care providers who have the training and experience necessary to conduct an evaluation of permanent impairment and to apply the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". The organization shall define, by rule, the process by which the organization shall choose an independent doctor health care provider or doctors health care providers to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor health care provider or doctors health care providers chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the organization for an impairment award for a rating of impairment for a body part or condition the organization has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor health care provider or doctors health care providers if the employee disputes the findings of the independent doctor health care provider or doctors health care providers.

<sup>270</sup> **SECTION 12. AMENDMENT.** Section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-28. Examination of injured employee - Paid expenses - No compensation paid if injured employee refuses to reasonably participate.**

An injured employee may select a doctor health care provider of that injured employee's choice to render initial treatment. Upon a determination that the injured employee's injury is compensable, the organization may require the injured employee to begin treating with another doctor health care provider to better direct the medical aspects of the injured employee's claim. The organization shall provide a list of three doctors health care providers who specialize in the treatment of the type of injury the employee sustained. At the organization's request, the injured employee shall select a doctor health care provider from the list. An injured employee shall follow the directives of the doctor or health care provider who is treating the injured employee as chosen by the injured employee at the request of the organization and comply with all

<sup>270</sup> Section 65-05-28 was also amended by section 8 of House Bill No. 1073, chapter 525.

reasonable requests during the time the injured employee is under medical care. Providing further that:

1. ~~No~~An injured employee may not change from one ~~doctor~~health care provider to another while under treatment or after being released, without the prior written authorization of the organization. Failure to obtain approval of the organization renders the injured employee liable for the cost of treatment and the new doctor will not be considered the attending ~~doctor~~health care provider for purposes of certifying temporary disability.
  - a. Any injured employee requesting a change of ~~doctor~~health care provider shall file a written request with the organization stating all reasons for the change. Upon receipt of the request, the organization ~~will~~shall review the injured employee's claim and approve or deny the change of ~~doctor~~health care provider, notifying the injured employee and the requested ~~doctor~~health care provider.
  - b. Emergency care or treatment or referral by the attending ~~doctor~~health care provider does not constitute a change of ~~doctor~~health care provider and does not require prior approval of the organization.
2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt, when appropriate, and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the organization reimbursement rates in effect on the date of incurred travel or expense. The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. A personal reimbursement requested under this subsection is a managed care decision under section 65-02-20, subject to the appeal process as provided for in section 65-02-20. Providing further that:
  - a. Payment for mileage or other travel expenses may not be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
  - b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the organization may pay no more than actual cost of lodging, if actual cost is less;
  - c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
  - d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the injured employee's injury prevents travel alone and the inability is medically substantiated; and
  - e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.

3. The organization may at any time require an injured employee to submit to an independent medical examination or independent medical review by one or more duly qualified ~~doctors~~allied health care professionals designated or approved by the organization. The organization shall make a reasonable effort to designate a duly qualified ~~doctor~~allied health care professional licensed in the state in which the injured employee resides to conduct the examination before designating a duly qualified ~~doctor~~allied health care professional licensed in another state or shall make a reasonable effort to designate a duly qualified ~~doctor~~allied health care professional licensed in a state other than the injured employee's state of residence if the examination is conducted at a site within two hundred seventy-five miles [442.57 kilometers] from the injured employee's residence. An independent medical examination and independent medical review must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. An independent medical examination contemplates an actual examination of an injured employee, either in person or remotely if appropriate. An independent medical review contemplates a file review of an injured employee's records, including treatments and testing. The injured employee may have a duly qualified ~~doctor~~health care provider designated by that employee present at the examination or later review the written report of the ~~doctor~~allied health care professional performing the independent medical examination, if procured and paid for by that injured employee. Providing further that:
  - a. In case of any disagreement between ~~doctors~~allied health care professionals making an examination on the part of the organization and the injured employee's ~~doctor~~allied health care professional, the organization shall appoint an impartial ~~doctor~~allied health care professional duly qualified who shall make an examination and shall report to the organization.
  - b. The injured employee, in the discretion of the organization, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the injured employee is working and loses gross wages from the injured employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
4. If an injured employee, or the injured employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination or treatment, or refuses to reasonably participate in medical or other treatments or examinations, the injured employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the injured employee.
5. If an injured employee undertakes activities, whether or not in the course of employment, which exceed the treatment recommendations of the injured employee's ~~doctor~~health care provider regarding the work injury, and the ~~doctor~~health care provider determines that the employee's injury or condition has been aggravated or has worsened as a result of the injured employee's activities, the organization may not pay benefits relative to the aggravation or worsening, unless the activities were undertaken at the demand of an employer. An employer's account may not be charged with the expenses of an

aggravation or worsening of a work-related injury or condition unless the employer knowingly required the injured employee to perform activities that exceed the treatment recommendations of the injured employee's doctor/health care provider.

**SECTION 13. AMENDMENT.** Subsection 2 of section 65-05-29 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Notwithstanding paragraph 2 of subdivision c of subsection 1, during the sixty days immediately following the date of injury, if the organization accrues a medical/health care provider expense or makes a payment for a medical expense and the organization later determines the medical expense is for the care and treatment of a noncompensable injury, disease, or other condition, the injured employee is not liable for the medical expense accrued or paid by the organization before the earlier of:
  - (1) The third day following the date the organization makes a determination the medical expense is for a noncompensable injury, disease, or condition; or
  - (2) The third day following the date the injured employee or medical provider reasonably should have known the medical expense is for a noncompensable injury, disease, or condition.
- b. Medical expenses incurred under this subsection may not be charged against an employer's account for purposes of experience rating.

**SECTION 14. AMENDMENT.** Section 65-05-30 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-30. Filing of claim constitutes consent to use of information received by doctor/health care provider.**

1. The filing of a claim with the organization constitutes a consent to the use by the organization, in any proceeding by the organization or to which the organization is a party in any court, of any information, including prior and subsequent prognosis reports, medical records, medical bills, and other information concerning any health care or health care services which was received by any health care provider, hospital, or clinic in the course of any examination or treatment of the claimant.
2. The filing of a claim with the organization authorizes a health care provider, hospital, or clinic to disclose to the organization, or authorized representative of the organization, information or render an opinion regarding the injured employee's claim with the organization. As used in this subsection, an opinion may include a statement regarding liability, causation, or a pre-existing condition or other information the organization deems necessary for the administration of this title. The filing of a claim with the organization authorizes a health care provider, hospital, or clinic to disclose any information to the organization deemed necessary for the administration of this title to the organization's representative, or the employer, except any information directly disclosed to the employer must be relevant to the employee's work injury or to return-to-work issues.
3. If a health care provider furnishes information or an opinion under this section:

- a. That health care provider does not incur any liability as a result of furnishing that information or opinion.
- b. The act of furnishing that information or opinion may not be the sole basis for a disciplinary or other proceeding affecting professional licensure. However, the act of furnishing that information or opinion may be considered in conjunction with another action that may subject the health care provider to a disciplinary or other proceeding affecting professional licensure.

**SECTION 15. AMENDMENT.** Subsection 3 of section 65-05-32 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Physicians or health care providers~~Allied health care professionals treating or examining employees claiming benefits under this title, or ~~physicians~~allied health care professionals giving medical advice to the organization regarding any claim may, at the discretion of the organization, inspect the claim files and records of injured employees.

**SECTION 16. AMENDMENT.** Subsection 5 of section 65-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. If the employee's first appropriate option is an option listed in subdivision c, d, e, or f of subsection 4, the organization may pursue retraining of one hundred four weeks or less. If an option listed in subdivision a, b, c, d, e, or f of subsection 4 has been identified as appropriate for an injured employee and the employee is initially released by the ~~doctor~~health care provider to return to part-time employment with the reasonable expectation of attaining full-time employment, the organization shall pay temporary partial disability benefits under section 65-05-10 until the ~~doctor~~health care provider determines the employee is medically capable of full-time employment.

**SECTION 17. AMENDMENT.** Subsection 6 of section 65-05.1-02 of the North Dakota Century Code is amended and reenacted as follows:

6. Establish medical assessment teams, the composition of which must be determined by the organization on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's physical restrictions and limitations. The medical assessment team must be provided the medical records compiled by the worker's treating ~~physicians~~health care providers. The medical assessment team may consult the worker's treating ~~physicians~~health care providers prior to making its final assessment of the worker's functional capacities. The provisions of section 65-05-28 do not apply to the medical findings made under this section.

**SECTION 18. AMENDMENT.** Subsection 1 of section 65-07-03 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~56~~ of section 65-01-02 for purposes of determining the premium for coverage of an employer, an employer's spouse, 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.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 524

### HOUSE BILL NO. 1072

(Industry, Business and Labor Committee)  
(At the request of Workforce Safety and Insurance)

AN ACT to create and enact a new subsection to section 65-04-27.2 of the North Dakota Century Code, relating to cease and desist orders; to amend and reenact section 65-01-02, subsection 4 of section 65-01-08, sections 65-01-10, 65-04-04, 65-04-06, 65-04-19, 65-04-22, 65-04-24, and 65-04-26.2, subsection 3 of section 65-04-32, section 65-04-33, and subsection 1 of section 65-09-01 of the North Dakota Century Code, relating to definitions, the removal of the word "annual", off-setting premiums, the organizational seal, payroll reports, payment of premiums, premiums in default, notice of premium owing, liability of a general contractor, notices of decision, noncompliance of employers, and liability of uninsured employers; to repeal section 65-06.2-09 of the North Dakota Century Code, relating to safety and performance reviews; to provide a penalty; and to provide for an application.

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

<sup>271</sup> **SECTION 1. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **65-01-02. Definitions.**

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the injured employee was receiving from all employments for which coverage is required or otherwise

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<sup>271</sup> Section 65-01-02 was also amended by section 1 of House Bill No. 1073, chapter 525, section 137 of Senate Bill No. 2124, chapter 391, and section 2 of Senate Bill No. 2184, chapter 523.

secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the injured employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
  - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
  - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
  - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
  - e. Biweekly rate divided by two.
  - f. The usual wage paid other employees engaged in similar occupations.
  - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant injured employee during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
  7. "Board" means the workforce safety and insurance board of directors.
  8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
  9. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the injured employee; or is under eighteen years of age and does not reside with the injured employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the injured employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the injured employee for support. A child does not include a married child unless actually dependent on the injured employee as shown on the preceding year's income tax returns.

10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

- (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
- (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist 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 organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment ~~when~~that is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment 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 pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.
  - (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.
11. "Date of first disability" means the first date the injured employee was unable to work because of a compensable injury.
  12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
  13. "Director" means the director of the organization.
  14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
  15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.
  16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.
- (2) Aliens.
- (3) County general assistance workers, except those who are engaged in repaying to counties moneys the counties have been compelled by statute to expend for county general assistance.
- (4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

- (1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.
- (2) An individual who is engaged in an illegal enterprise or occupation.
- (3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:
  - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
  - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
  - (c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other

efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.

(7) An employer.

17. "Employer" means a person ~~who~~that engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
  - a. The state and all political subdivisions thereof.
  - b. All public and quasi-public corporations in this state.
  - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
  - d. The legal representative of any deceased employer.
  - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
  - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
  - g. The managers of a limited liability company.
  - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
  - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
  - j. A multidistrict special education unit.
  - k. An area career and technology center.
  - l. A regional education association.
18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
  - a. Agricultural or domestic service.
  - b. Any employment of a common carrier by railroad.

- c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
  - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
21. "Health care provider" includes a doctor, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
  22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
  23. "Noncompliance" means failure to follow the requirements of chapter 65-04. An employer may be in noncompliance regardless of the employer's insured or uninsured status with the organization.
  - 23-24. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
  - 24-25. "Parent" includes a stepparent and a parent by adoption.
  26. "Payroll report" means the mechanism created by the organization and used by employers to report all employee payroll required by the organization.
  - 25-27. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
  - 26-28. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an injured employee from performing any work and results from any one of the following conditions:
    - a. Total and permanent loss of sight of both eyes;
    - b. Loss of both legs or loss of both feet at or above the ankle;
    - c. Loss of both arms or loss of both hands at or above the wrist;
    - d. Loss of any two of the members or faculties in subdivision a, b, or c;
    - e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;

- f. Third-degree burns that cover at least forty percent of the body and require grafting;
- g. A medically documented brain injury affecting cognitive and mental functioning which renders an injured employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or
- h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the injured employee has not reached maximum medical improvement within one hundred four weeks, the injured employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the injured employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

- 27-29. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
- 28-30. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
- 29-31. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
32. "Subcontractor" means a person that agrees to perform all or part of the work for a contractor or another subcontractor.
- 30-33. "Temporary total disability" means disability that results in the inability of an injured employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the injured employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.
34. "Uninsured" means failure of an employer to secure mandatory coverage with the organization or failure to pay premium, assessment, penalty, or interest, as calculated by the organization, which is more than forty-five days past due. An uninsured employer is subject to chapter 65-09.
- 34-35. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to

review individual cases for which administrative action may be deemed necessary.

~~32-36~~. a. "Wages" means:

- (1) An injured employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes.
  - (2) For members of the national guard who sustain a compensable injury while on state active duty, "wages" includes income from federal employment and may be included in determining the average weekly wage.
  - (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.
- b. The organization may consider postinjury wages for which coverage was not required or otherwise secured in North Dakota for purposes of determining appropriate vocational rehabilitation options or entitlement to disability benefits under this title.

**SECTION 2. AMENDMENT.** Subsection 4 of section 65-01-08 of the North Dakota Century Code is amended and reenacted as follows:

4. A staffing service that provides only temporary staffing services is the employee's employer. The temporary staffing service shall maintain a workforce safety and insurance account in the temporary staffing service's name and report the wages for those workers annually to the organization. All other staffing services shall:
  - a. Report ~~annually the payroll detail~~ as directed by the organization for each North Dakota client company.
  - b. Maintain complete and separate records of the payroll of the staffing service's client companies. Claims must be separately identified by the staffing service for each client company.
  - c. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between a staffing service and a client company is terminated, the employees become the sole employees of the client company.
  - d. Notify the organization of the client company's name, workforce safety and insurance account number, and the date the staffing service began providing services to the client company. The staffing service shall provide this information upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.
  - e. Supply the organization with a copy of the agreement between the staffing service and client company.

- f. Notify the organization upon termination of any agreement with a client company, but no later than fifteen days from the effective date of termination.
- g. Notify the staffing service's client companies of an uninsured status for failure to pay workforce safety and insurance premiums within fifteen days of notice by the organization.

**SECTION 3. AMENDMENT.** Section 65-01-10 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-10. Waiver of rights to compensation void - Deduction of premium from employee prohibited - Penalty.**

No agreement by an employee to waive rights to compensation under this title is valid except as provided in section 65-05-25. No agreement by any employee to pay any portion of the premium paid or payable by the employer into the fund is valid, and any employer who deducts any portion of ~~such~~the premium from the wages or salary of any employee ~~entitled to the~~eligible for benefits ~~of~~under this title is guilty of a class A misdemeanor and is subject to a penalty of up to five thousand dollars. The organization may reduce the penalties provided under this section. An employer may not appeal an organization decision not to reduce a penalty under this section.

**SECTION 4. 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 and assessments - Premium ~~and certificates to be mailed~~Certificate provided.**

1. Each employer subject to this title shall pay into the fund ~~annually~~ the amount of ~~premiums~~premium and assessment determined ~~and fixed~~ by the organization ~~for the employment or occupation of the employer.~~ The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title.
2. The organization shall ~~mail~~provide to the employer a certificate specifying that the payment has been made. The certificate, ~~attested by the seal of the organization,~~ is prima facie evidence of the payment of the premium.
3. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum ~~premium~~due and has no employees for the period indicated on the certificate. If an employer defaults on premium or assessment payments after a certificate has been issued, the organization may revoke that employer's certificate.
4. The organization shall provide that premiums ~~to be paid~~or assessments payable by school districts, multidistrict special education units, area career and technology centers, and regional education associations, 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~~or assessments payable by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums or assessments of other employers fall due on different or specified dates.

5. For the purpose of effectuating different or specified due dates, the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization.
6. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud.
7. 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 5. AMENDMENT.** Section 65-04-06 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-06. Employer obligated to file payroll reports - Organization to specify method of providing information - Verification may be required.**

~~Information required by the organization shall be furnished by employers on preprinted forms provided free of charge, or in another manner specified by the organization. Each employer subject to this title shall provide at least annually a payroll report to the organization. The organization may require an employer to file a payroll report with the organization more frequently during the premium year.~~

~~Each employer required to file a payroll report must file the report by an electronic method approved by the organization. An employer that does not comply with the requirements to file the payroll report electronically is deemed to have failed to submit the payroll report. If an employer is unable to provide the information required, the employer shall submit to the organization in writing good and sufficient the reason therefor. The organization and its representatives may require any employer to submit information verified under oath within the time period fixed by it or by law.~~

**SECTION 6. AMENDMENT.** Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-19. Organization to assign rate classifications, calculate premium, and determine premium due from employer - Mailing Notification of premium billing statement as notice of amount due.**

1. The organization shall assign rate classifications based on information provided to the organization by the employer or information gathered through the organization's investigative process.
2. The organization 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 organization received information an employer is subject to the title.
3. If the organization does not receive the annual payroll report or, in the case of a noncompliant employer, the organization does not receive reliable and accurate payroll information, the organization may calculate premium using the wage cap in effect per employee reported in the previous payroll report,



using information obtained through the organization's investigative process, or using data obtained from job service North Dakota.

4. The organization shall ~~mail~~send a copy of the ~~premium~~ billing statement to the employer. ~~Mailing of~~Sending the ~~premium~~ billing statement, by mail or electronically, constitutes notice to the employer of the amount due.

**SECTION 7. AMENDMENT.** Section 65-04-22 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-22. Organization may make premium due immediately - When premium is in default - Penalty.**

The organization may require ~~payment of a premium, including an advance premium, a security deposit, or any other instrument that is acceptable to the organization, within any time which, in the judgment of the organization, is reasonable and necessary to secure the payment of the premium by any employer. The organization may require advance payment of the premium, whether paid either~~ in full or in installments. Any payment shall be in default one month from the payment due date specified in the ~~premium~~ billing statement.

Default of any installment payment will, at the option of the organization, make the entire remaining balance of the premium due and payable. The organization may declare an employer uninsured at any time after forty-five days have passed from the due date specified in the ~~premium~~ billing statement and the employer has failed to make a payment to the organization. The organization may decline coverage to any employer that has been determined to be uninsured under this section or where a premium delinquency remains unresolved.

When an employer defaults in the payment of a premium, an installment of the premium, 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 8. AMENDMENT.** Section 65-04-24 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-24. Notice of premium or assessment owing - Organization to bring suit for premiums in default.**

~~When an employer defaults on payment of premium, penalties, or interest, the organization may bring suit for the collection of premium, accrued penalties and interest, and any additional penalties and interest that may accrue. The organization shall notify an employer of the amount of premium, assessment, penalty, and interest due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, assessment, penalties, and interest due by civil action. In any action for the collection of amounts due the organization under this title, the court may not review or consider the action of the organization regarding the acceptance or payment of any claim. The organization may adjust or compromise the account. The organization may retain counsel on a contingent fee basis to represent the organization in any proceeding relating to the collection of amounts due under this title. The organization shall charge attorney's fees and costs to the organization's general fund. In any action for the collection of~~

amounts due the organization under this title, the court may not review or consider the action of the organization regarding the acceptance or payment of any claim.

**SECTION 9. AMENDMENT.** Section 65-04-26.2 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-26.2. General contractor liability for subcontractors and independent contractors.**

1. An individual employed by a subcontractor or by an independent contractor operating under an agreement with a general contractor is deemed to be an employee of the general contractor ~~if and any subcontractor that supplied work to the subcontractor or independent contractor does not secure coverage as required under this title.~~ A general contractor ~~is and a subcontractor are~~ liable for payment of premium and any applicable penalty for an employee of a subcontractor or independent contractor that does not secure required coverage ~~or pay the premium owing.~~ The general contractor ~~is and a subcontractor are~~ liable for payment of this premium and penalty until the subcontractor or independent contractor pays this premium and penalty. The liability imposed on a general contractor ~~and a subcontractor~~ under this section for the payment of premium and penalties under this title which are not paid by a subcontractor or independent contractor is limited to work performed under that general contractor.
2. Upon request of the organization, a person the organization determines may have information that may assist the organization in determining the amount of wages expended by the subcontractor or independent contractor shall provide this information to the organization.
3. If the organization is unable to obtain complete and reliable payroll information for a subcontractor or independent contractor, the organization may calculate premium using the available payroll information of the subcontractor or independent contractor for work performed under the liable general contractor ~~or a subcontractor~~ as permitted in section 65-04-19. If a subcontractor's or independent contractor's liability for failure to secure coverage ~~or pay the premium owing~~ arises from a single project with a general contractor, the liability of the general contractor ~~and subcontractor~~ is one hundred percent of the amount of premium and penalty owed by the subcontractor or independent contractor. If there is evidence showing the subcontractor or independent contractor was working on multiple projects during the period the subcontractor or independent contractor failed to secure coverage, the organization shall set the amount of ~~the the general contractor's~~ ~~contractor and subcontractor's~~ liability which may not exceed seventy percent of the total premium and penalty owed by the subcontractor or independent contractor.
4. The definition of the term "contractor" under section 43-07-01 applies to this section.

**SECTION 10.** A new subsection to section 65-04-27.2 of the North Dakota Century Code is created and enacted as follows:

A general contractor or a subcontractor that willfully uses the services of a subcontractor precluded from operating under a cease and desist order is subject to a penalty of five thousand dollars and one hundred dollars per day for each day the violation occurs. The organization shall provide notice to the general contractor or subcontractor by regular mail before assessing penalties

under this section. The organization may reduce the penalties under this section.

**SECTION 11. AMENDMENT.** Subsection 3 of section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Within sixty days after~~After receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall serve on the parties by ~~certified~~regular mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration. The organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration. If the organization does not issue an order within sixty days of receiving a request for reconsideration, a party may request, and the organization shall promptly issue, an appealable determination.

**SECTION 12. AMENDMENT.** Section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-33. Intentional acts - Failure to secure coverage - Uninsured - 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 workforce safety and insurance coverage for the protection of employees by notifying the organization of the intended employment, the nature of the intended employment, and the estimated payroll expenditure for the coming twelve-month period.
2.
  - a. An employer ~~who~~that willfully misrepresents to the organization or its representative the amount of payroll upon which a premium under this title is based, or ~~who~~that willfully fails to secure coverage for employees, is liable to the state in the amount of five thousand dollars plus three times the difference between the premium paid and the amount of premium the employer should have paid.
  - b. The organization shall collect a penalty imposed under this subsection in a civil action in the name of the state, and the organization shall deposit a penalty collected under this subsection to the credit of the workforce safety and insurance fund.
  - c. An employer ~~who~~that willfully misrepresents to the organization or its representative the amount of payroll upon which a premium under this title is based, or ~~who~~that willfully fails to secure coverage for employees, is guilty of a class A misdemeanor. If the premium due exceeds one thousand dollars, the penalty for willful failure to secure coverage or willful misrepresentation to the organization 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 workforce safety and insurance coverage under this subsection.
  - d. In addition to the penalties prescribed by this subsection, the organization may initiate injunction proceedings as provided for in this title to enjoin an employer from unlawfully employing uninsured workers.

- e. 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~~that willfully makes a false statement in an attempt to preclude an injured worker from securing benefits or payment for services, ~~or that willfully discharges or threatens to discharge an employee for seeking or making known the intention to seek workforce safety and insurance benefits~~ is liable to the state in the amount of five thousand dollars. The organization shall collect a civil penalty imposed under this section in a civil action in the name of the state, and the organization shall deposit a penalty collected under this section to the credit of the workforce safety and insurance fund. A willful violation of this section is a class A misdemeanor. 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.
4. a. An employer ~~who~~that is uninsured for failure to secure coverage is liable for any premiums, assessments 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~~failure to secure coverage.
- b. An additional five percent penalty is due for each year of ~~noncompliance~~failure to secure coverage before the most recent year beginning on the date the organization became aware of the employer's ~~uninsured status~~failure to secure coverage, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent.
- c. In addition, the organization may assess a penalty of up to five thousand dollars for each premium period the employer was ~~uninsured~~failed to secure coverage. The organization may not assess a penalty for more than six years of ~~past noncompliance~~failure to secure coverage.
- d. ~~The organization may assess additional penalties, from the date the organization 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. In addition, the~~The organization may assess an employer the actual cost and reserves of any claim attributable to the employer during the time the employer was ~~uninsured~~failed to secure coverage.
- e. The penalties for employers are in addition to any other penalties by law. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.
5. a. An employer in noncompliance is subject to a penalty of up to five thousand dollars for each premium period the employer was in noncompliance.
- b. The organization may not assess a penalty for more than six years of past noncompliance.

- c. The organization may reduce the penalties provided for under this section. An employer may not appeal an organization decision not to reduce a penalty under this subsection.
- 5-6. a. An employer whothat fails or refuses to furnish to the organization the annual payroll report andor estimate, or whothat fails or refuses to furnish other information required by the organization under this chapter is subject to a penalty established by the organization of tweup to five thousand dollars.
- b. Upon the request of the organization, the employer shall furnish the organization any of that employer's payroll records, annual payroll reports, and other information required by the organization under this chapter and an estimate of payroll for the advance premium year.
- c. If the employer fails or refuses to provide the records within thirty days of a written request from the organization, the employer is subject to a penalty of five thousand dollars and a penalty not to exceed one hundred dollars for each day until the organization receives the records, in addition to the five thousand dollar penalty set forth in subsection 4.
- d. The organization may not assess a penalty that exceeds one hundred fifty dollars under this subsection against an organized township.
- e. The organization may reduce penalties for employers under this subsection. However, an employer may not appeal an organization decision not to reduce a penalty. The organization shall notify an employer by regular mail of the amount of premium and penalty due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization 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 organization 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.
6. 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.** Subsection 1 of section 65-09-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Any employer subject to this title whothat is in violation of subsection 1 or 2 of section 65-04-33 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.

**SECTION 14. REPEAL.** Section 65-06.2-09 of the North Dakota Century Code is repealed.

**SECTION 15. APPLICATION.** Section 5 of this Act applies to employer payroll periods ending on or after August 31, 2019.

**SECTION 16. APPLICATION.** Section 9 of this Act applies to all employer accounts regardless of the date the employer did not secure coverage or did not pay the premium owing.

Approved March 6, 2019

Filed March 6, 2019

## CHAPTER 525

### HOUSE BILL NO. 1073

(Industry, Business and Labor Committee)  
(At the request of Workforce Safety and Insurance)

AN ACT to create and enact a new section to chapter 65-01 and a new section to chapter 65-05 of the North Dakota Century Code, relating to a pilot program to assess alternative forms of dispute resolution and the electronic submission of medical billings; to amend and reenact section 65-01-02, subsection 3 of section 65-01-15.1, sections 65-02-21.1, 65-05-09 and 65-05-10, and subsection 4 of section 65-05-28 of the North Dakota Century Code, relating to functional capacity examinations, medical examinations for full-time paid firefighters and law enforcement officers, licensing required for allied health care professionals, average weekly wage upon recurrence of disability, combined partial disability benefits, and medical noncompliance; to repeal section 65-02-07 of the North Dakota Century Code, relating to the organization seal; to provide a continuing appropriation; and to provide for application.

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

<sup>272</sup> **SECTION 1. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **65-01-02. Definitions.**

In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
4. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the injured employee was receiving from all employments for which coverage is required or otherwise

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<sup>272</sup> Section 65-01-02 was also amended by section 1 of House Bill No. 1072, chapter 524, section 137 of Senate Bill No. 2124, chapter 391, and section 2 of Senate Bill No. 2184, chapter 523.

secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the injured employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
  - b. The "average weekly wage" of a self-employed employer is determined by the following formula: one fifty-second of the average annual net self-employed earnings reported the three preceding tax years or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available.
  - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
  - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
  - e. Biweekly rate divided by two.
  - f. The usual wage paid other employees engaged in similar occupations.
  - g. A wage reasonably and fairly approximating the weekly wage lost by the claimantinjured employee during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
  7. "Board" means the workforce safety and insurance board of directors.
  8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
  9. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child who is under eighteen years of age and resides with the injured employee; or is under eighteen years of age and does not reside with the injured employee but a duty of support is substantiated by an appropriate court order; or is between eighteen and twenty-two years of age and enrolled as a full-time student in any accredited educational institution and dependent upon the injured employee for support; or is eighteen years of age or over and is physically or mentally incapable of self-support and is actually dependent upon the injured employee for support. A child does not include a married child unless actually dependent on the injured employee as shown on the preceding year's income tax returns.



10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

- (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
- (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist 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 organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment 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 pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.
  - (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.
11. "Date of first disability" means the first date the injured employee was unable to work because of a compensable injury.
  12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
  13. "Director" means the director of the organization.
  14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
  15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, or an advanced practice registered nurse or certified physician assistant.
  16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

## a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.
- (2) Aliens.
- (3) County general assistance workers, except those who are engaged in repaying to counties moneys the counties have been compelled by statute to expend for county general assistance.
- (4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

## b. The term does not include:

- (1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.
- (2) An individual who is engaged in an illegal enterprise or occupation.
- (3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
- (4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:
  - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
  - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
  - (c) A written agreement must exist between the salesperson or broker and the person for which the salesperson or broker works, which agreement must provide the salesperson or broker will not be treated as an employee but rather as an independent contractor.
- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) An individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other

efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states the individual is an independent contractor.

(7) An employer.

17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:
  - a. The state and all political subdivisions thereof.
  - b. All public and quasi-public corporations in this state.
  - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
  - d. The legal representative of any deceased employer.
  - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
  - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
  - g. The managers of a limited liability company.
  - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
  - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
  - j. A multidistrict special education unit.
  - k. An area career and technology center.
  - l. A regional education association.
18. "Fee schedule" means the payment formulas established in the organization publication entitled "Medical and Hospital Fees".
19. "Fund" means the workforce safety and insurance fund.
20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
  - a. Agricultural or domestic service.
  - b. Any employment of a common carrier by railroad.

- c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
  - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
21. "Health care provider" includes a doctor, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
  22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant as a physician-recommended form of medicine or herbal therapy. The term does not include treatments or preparations specifically approved by the United States food and drug administration as a drug product.
  23. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
  24. "Parent" includes a stepparent and a parent by adoption.
  25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
  26. "Permanent total disability" means disability that is the direct result of a compensable injury that prevents an injured employee from performing any work and results from any one of the following conditions:
    - a. Total and permanent loss of sight of both eyes;
    - b. Loss of both legs or loss of both feet at or above the ankle;
    - c. Loss of both arms or loss of both hands at or above the wrist;
    - d. Loss of any two of the members or faculties in subdivision a, b, or c;
    - e. Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
    - f. Third-degree burns that cover at least forty percent of the body and require grafting;
    - g. A medically documented brain injury affecting cognitive and mental functioning which renders an injured employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living; or

- h. A compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2.

If the injured employee has not reached maximum medical improvement within one hundred four weeks, the injured employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the injured employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, vocational retraining including training for alternative employment with the same employer, and job placement assistance.
28. "Seasonal employment" includes occupations that are not permanent or that do not customarily operate throughout the entire year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.
29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
30. "Temporary total disability" means disability that results in the inability of an injured employee to earn wages as a result of a compensable injury for which disability benefits may not exceed a cumulative total of one hundred four weeks or the date the injured employee reaches maximum medical improvement or maximum medical recovery, whichever occurs first.
31. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the organization to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
32. "Valid functional capacities examination" means:
- a. The results of a physical examination consisting of a battery of standardized assessments that offer reliable results in performance-based measures and demonstrate the level and duration an injured employee may return to work.
  - b. The conclusions of medical experts, following observations of other activities the medical expert determines similarly predictive, when the results of the physical examination in subdivision a are not obtained or reliable.

- 32-33. a. "Wages" means:

- (1) An injured employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes.
  - (2) For members of the national guard who sustain a compensable injury while on state active duty, "wages" includes income from federal employment and may be included in determining the average weekly wage.
  - (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.
- b. The organization may consider postinjury wages for which coverage was not required or otherwise secured in North Dakota for purposes of determining appropriate vocational rehabilitation options or entitlement to disability benefits under this title.

**SECTION 2. AMENDMENT.** Subsection 3 of section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and ~~papanicolaou smear for women~~. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. If a medical examination produces a false positive result for a condition covered under this section, the organization shall consider the condition to be a compensable injury. In the case of a false positive result, neither the coverage of the condition nor the period of disability may exceed fifty-six days. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section.

**SECTION 3.** A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

**Alternative dispute resolution - Pilot program - Continuing appropriation.**

Notwithstanding any other provision of law, the organization may develop and implement pilot programs to allow the organization to assess alternative forms of dispute resolution to resolve disputes with injured employees. The goal of the pilot program must be to develop timely, cost-effective, and amicable options to resolve disputes during any stage in the claim adjudication or appeal process. A pilot program may address a broad range of approaches, including collaborative efforts between the organization and other public or private entities. Participation of an injured employee in the pilot program is voluntary. No more than fifty thousand dollars per biennium from the workforce safety and insurance fund is appropriated to the organization on a continuing basis for payment of organization expenses associated with the pilot program.

<sup>273</sup> **SECTION 4. AMENDMENT.** Section 65-02-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-21.1. Licensure required for psychologists and physiciansallied health care professionals performing utilization review.**

PsychologistsAllied health care professionals making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the North Dakota board of medicine. This requirement does not apply to psychologists or physiciansor conducting independent medical examinations or independent medical reviews under section 65-05-28 shall have current licenses from a state licensing agency within the United States.

**SECTION 5.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Medical bills - Electronic acceptance.**

The organization shall establish guidelines, systems, and procedures for the acceptance of medical bills and supporting documentation by electronic methods. Health care providers shall submit medical bills and supporting documentation to the organization by this electronic method no later than July 1, 2021.

**SECTION 6. AMENDMENT.** Section 65-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-09. Temporary total or permanent total disability - Weekly and aggregate benefit.**

If an injury causes temporary total or permanent total disability, the fund shall pay to the disabledinjured employee during that disability a weekly benefit equal to sixty-six and two-thirds percent of the gross weekly wage of the injured employee, subject to a minimum of sixty percent and a maximum of one hundred twenty-five percent of the average weekly wage in the state. If an injured employee is disabled due to an injury, that injured employee's benefits will be based upon the injured employee's wage and the organization benefit rates in effect on the date of first disability.

1. ~~Unless otherwise provided in this subsection, if an injured employee suffers disability but is able to return to employment for a period of three consecutive~~

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<sup>273</sup> Section 65-02-21.1 was also amended by section 6 of Senate Bill No. 2184, chapter 523.



calendar months or more, that injured employee's benefits will be based upon the wage in effect received at the time of the recurrence of the disability ~~or upon the wage that employee received prior to the injury, whichever is higher.~~ If the wage received at the time of the recurrence of the disability is lower than the wage received before the injury and the lower wage is due to the physical limitations of the compensable injury, the injured employee's benefits must be based upon the wage the injured employee received before the injury. It is the burden of the injured employee to show the inability to earn as much as the injured employee earned before the injury is due to the physical limitation related to the injury. The organization benefit rates are those in effect at the time of that recurrence.

2. The disability benefit or the combined disability benefit and dependency award may not exceed the weekly wage of the injured employee after deductions for social security and federal income tax.
3. When an injured employee is permanently and totally disabled, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, as much of that injured employee's weekly benefit as is necessary may be used by the organization to help defray the cost of the nursing home care.

**SECTION 7. AMENDMENT.** Section 65-05-10 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-10. Partial disability - Weekly benefit.**

If the injury causes temporary partial disability resulting in decrease of earning capacity, the disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the injured employee's wage-earning capacity after the injury in the same or another employment. Partial disability benefits are subject to a maximum of one hundred twenty-five percent of the average weekly wage in the state. The combined partial disability benefits, dependency allowance, and postinjury wage-earning capacity may not exceed ninety percent of the preinjury weekly wage of the injured employee after deductions for social security and federal income tax.

1. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the organization.
2. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The organization may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1 or when the injured worker is working and has long-term restrictions verified by clear and convincing objective medical and vocational evidence that limits the injured worker to working less than twenty-eight hours per week because of the compensable work injury. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
3. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity if the job employs the employee to full work capacity in terms of

hours worked per week, and if the job is in a field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

274 **SECTION 8. AMENDMENT.** Subsection 4 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

4. If an injured employee, or the injured employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination or treatment, or refuses to reasonably participate in medical or other treatments or examinations, ~~the injured employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the injured employee is medically noncompliant. If the organization determines an injured employee is medically noncompliant without good cause, the organization shall discontinue disability and vocational rehabilitation benefits. At any time the injured employee is medically noncompliant, efforts by the injured employee to come into compliance are not considered successful compliance until the injured employee has been compliant for a period of at least sixty days. If the period of medical noncompliance continues for sixty days following the date disability and vocational rehabilitation benefits are discontinued, or a second instance of medical noncompliance occurs without good cause, the organization may not pay any further disability and vocational rehabilitation benefits, regardless of whether the injured employee sustained a significant change in medical condition due to the work injury. The period of the refusal or obstruction noncompliance~~ must be deducted from the period for which compensation is payable to the injured employee.

**SECTION 9. REPEAL.** Section 65-02-07 of the North Dakota Century Code is repealed.

**SECTION 10. APPLICATION.** Sections 1, 2, 4, 6, 7, and 8 of this Act apply to all claims regardless of date of injury.

Approved March 13, 2019

Filed March 14, 2019

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274 Section 65-05-28 was also amended by section 12 of Senate Bill No. 2184, chapter 523.

## CHAPTER 526

### HOUSE BILL NO. 1240

(Representatives Mitskog, Becker, Boschee, Roers Jones, D. Ruby)  
(Senators Burckhard, Oban, J. Roers)

AN ACT to create and enact a new section to chapter 65-01 of the North Dakota Century Code, relating to workforce safety and insurance pilot program; to amend and reenact section 65-05.1-06.3 of the North Dakota Century Code, relating to rehabilitation services pilot programs; and to provide for a report to the legislative management.

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

**SECTION 1.** A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

##### **Pilot programs - Report to legislative management.**

Annually the organization shall report to the legislative management on the status of any current pilot programs and pilot programs completed within the previous twelve months. The report must include a summary of findings and recommendations on each pilot program, together with any legislation required to implement the recommendations.

**SECTION 2. AMENDMENT.** Section 65-05.1-06.3 of the North Dakota Century Code is amended and reenacted as follows:

##### **65-05.1-06.3. Rehabilitation services pilot programs - Reports.**

The organization may implement a system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation services. A pilot program may address one or more of the organization's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The goal of a pilot program must be to improve the outcome of the rehabilitation services offered by the organization to assist the injured employee in making adjustments necessitated from the employee's injury and to improve the effectiveness of vocational rehabilitation services in returning an employee to substantial gainful employment. Notwithstanding laws to the contrary, a pilot program may address a broad range of approaches, including collaborative efforts between the organization and the injured employee through which there are variances from the rehabilitation services hierarchy; return-to-work trial periods during which cash benefits are suspended; intensive job search assistance; recognition of and focused services for injured employees who are at risk; and coordination of services of public and private entities. If a pilot program utilizes coordination of services of other state agencies, such as job service North Dakota, department of human services, North Dakota university system, or department of public instruction, the organization shall consult with the state agency in establishing the relevant portions of the pilot program and the state agency shall cooperate with the organization in implementing the pilot program. ~~The organization shall include in its biennial report to the workers' compensation review committee under section 54-35-22~~ provide status reports on current pilot programs in accordance with section 1 of this Act.

Approved March 13, 2019

Filed March 14, 2019

## CHAPTER 527

### HOUSE BILL NO. 1062

(Representative Keiser)  
(Senator Klein)

AN ACT to amend and reenact subsection 2 of section 65-02-03.1 of the North Dakota Century Code, relating to the appointment of workforce safety and insurance board members; and to provide for application.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Board members shall serve four-year terms. The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each ~~odd-numbered~~even-numbered year. A board member whose initial appointment was before August 1, 2007, may not serve more than three consecutive terms and a board member whose initial appointment was after July 31, 2007, may not serve more than two consecutive terms.
  - a. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the member for an employer representative from a list of three potential candidates submitted by a coordinating committee appointed by the governor, composed of representatives from the associated general contractors of North Dakota, the North Dakota petroleum council, the greater North Dakota chamber of commerce, the North Dakota motor carriers association, the North Dakota hospital association, the national federation of independent business, the lignite energy council, and other statewide business interests.
  - b. The governor shall select the member for the organized labor employee representative from a list of three potential candidates submitted by an organization that is statewide in scope and which through the organization's affiliates embraces a cross section and a majority of organized labor in this state.
  - c. The governor shall select the two employee representatives who do not represent organized labor and the member at large.
  - d. The governor shall select the member representing the North Dakota medical association from a list of three potential candidates submitted by the North Dakota medical association.
  - e. Within the thirty days following receipt of a list of potential candidates representing employers, organized labor, or the North Dakota medical association, the governor may reject the list and request that the submitting entity submit a new list of potential candidates.

**SECTION 2. APPLICATION.** This Act applies to board members appointed or reappointed after July 31, 2019. The term of a board member whose term is scheduled to end on December 31, 2020, or December 31, 2022, must be extended for one year to transition all board terms to begin in even-numbered years.

Approved March 13, 2019

Filed March 14, 2019

## CHAPTER 528

### HOUSE BILL NO. 1188

(Representatives Keiser, Jones)

AN ACT to amend and reenact section 65-05-09.3 of the North Dakota Century Code, relating to the termination of benefits upon retirement; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 65-05-09.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **65-05-09.3. Retirement presumption - Termination of benefits upon retirement.**

1. An employee who has retired or voluntarily withdrawn from the labor force and who, at that time, was not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits or to receive a rehabilitation allowance from the organization is presumed retired from the labor market. The presumption may be rebutted by a preponderance of the evidence; however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement.
2. An injured employee who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits, unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, is considered retired. The organization may not pay any disability benefits, rehabilitation benefits, or supplementary benefits to an employee who is considered retired; however, the employee remains eligible for medical benefits, permanent partial impairment benefits, and the additional benefit payable under section 65-05-09.4.
3. The organization retains liability for disability benefits, rehabilitation benefits, permanent partial impairment benefits, and medical benefits for an injured employee who is receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits, unless the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, and who is gainfully employed and who suffers an injury arising out of and in the course of that employment. The organization may not pay disability or rehabilitation benefits under this subsection for more than three years, subject to section 65-05-09.2, for injuries occurring after August 1, 1997.
4. If an employee is injured within the two years preceding the employee's presumed retirement date, the organization shall pay disability benefits, rehabilitation benefits, or a combination of both benefits for no more than two

years. If the duration of disability benefits, rehabilitation benefits, or a combination of both benefits extends beyond the presumed retirement date, the organization shall convert the benefit to an additional benefit payable at the date the disability ends or when two years of benefits have been paid, whichever occurs first.

5. This section applies to an individual who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, after July 31, 1995.
6. An injured employee who has received disability benefits that have been discontinued before retirement in accordance with this section is eligible to receive disability benefits after retirement if the injured employee meets the reapplication criteria under subsection 1 of section 65-05-08. Disability and rehabilitation benefits received under this subsection may not exceed three years.

**SECTION 2. APPLICATION.** This Act applies to reapplications filed after July 31, 2019.

Approved March 13, 2019

Filed March 14, 2019

# VETOED MEASURES

## CHAPTER 529

### SENATE BILL NO. 2244

(Senators Dwyer, Bakke, G. Lee, Sorvaag)  
(Representatives Nathe, Zubke)

AN ACT to amend and reenact section 39-06-49, subsection 1 of section 39-06.2-07, subsection 2 of section 39-06.2-08, subdivision c of subsection 3 of section 39-06.2-09, sections 39-06.2-09.1, 39-06.2-13.1, and 39-06.2-19, subsections 5 and 6 of section 39-08-13, and subsection 3 of section 39-16-03 of the North Dakota Century Code, relating to driver's license fees.

VETO

March 21, 2019

The Honorable Brent Sanford  
President of the Senate  
North Dakota Senate  
State Capitol  
Bismarck, ND

Re: Senate Bill 2244

Dear President Sanford:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2244 and return it to the Senate unsigned.

Senate Bill 2244 doubles the fees for noncommercial and commercial driver's licenses, impacting more than 163,000 North Dakotans every biennium. The additional \$5.5 million collected by this bill comes directly out of the pockets of state citizens and imposes an unnecessary additional burden on our residents.

This fee increase was not requested in the executive budget. Throughout our strategic review and budgeting process, agencies focused on innovation and reinvention to find ways to fund priorities without exceeding ongoing revenues. Within this framework, the executive budget recommended \$22.5 million to transition our driver's license system from an outdated mainframe. With technology advancements and new methods of service delivery, the transactional cost of providing driver's licenses can be reduced.

Before any fee increase is adopted, especially a fee that doubles the price of a monopolized service essential to nearly all North Dakotans, further study is



warranted. Senate Bill 2130 was signed into law on March 8, 2019, requiring a comprehensive study of state agency fees, including department of transportation fees. Senate Bill 2130 will enable significant information gathering on these fees, to identify a more holistic approach.

Until then, I remain unconvinced that this 100% fee increase is necessary.

Sincerely,

Doug Burgum  
Governor

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

**SECTION 1. AMENDMENT.** Section 39-06-49 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-49. Fees - Deposit in state highway fund.**

1. All money received under this chapter must be paid monthly into the highway fund in the state treasury.
2. The fee for:
  - a. An application for a nondriver photo identification card is ~~eight~~ten dollars for applicants under the age of eighteen, otherwise there is no fee.
  - b. Written testing for an application for an operator's license is five dollars.
  - c. Initial, class change, and renewal permits is twenty dollars.
  - d. Actual ability testing for an application for ~~an~~ noncommercial operator's license is ~~five~~ten dollars, and a commercial operator's license is ten dollars.
  - ~~d-e.~~ An application for ~~an~~ noncommercial operator's license is ~~fifteen~~thirty dollars and a commercial operator's license is thirty dollars.
  - ~~e-f.~~ An application for a motorized bicycle operator's permit is ten dollars.
  - ~~f-g.~~ A substitute nondriver identification card or operator's license is ~~eight~~ten dollars unless the substitute is for erroneous information due to a change in name or address, then the fee is ~~three~~five dollars.
  - ~~g.~~ An
  - ~~h.~~ A noncommercial operator's license renewal is fifteenthirty dollars, and a commercial operator's license renewal is thirty dollars.
  - ~~h-i.~~ Reinstatement after suspension is ~~fifty~~one hundred dollars ~~unless the suspension was the result of a suspension under subsection 3, 4, or 6 of section 39-06-03 or subdivision b of subsection 1 of section 39-06-32, then the fee is twenty-five dollars, or unless the suspension was a result of a~~

- ~~violation under section 39-08-01 or chapter 39-20, then the fee is one hundred dollars.~~
- ~~i.j. Reinstatement after revocation is fiftyone hundred dollars, unless the revocation was imposed for a violation of subsection 6 of section 39-06-17 or section 39-06-31, 39-06-43, or 39-20-04, then the fee is one hundred dollars.~~
- ~~k. A commercial license endorsement is five dollars for each endorsement.~~
- ~~l. The driving record for an employer of a commercial license holder is five dollars.~~
- ~~m. Operating record abstracts, records of clearance, or other record data are six dollars per record.~~
- ~~n. An accident report provided with the law enforcement officer's opinion is ten dollars and is five dollars without the opinion.~~
3. Any application for which there is a fee must be accompanied by the proper fee.
4. The department shall provide a biennial report to the legislative assembly on the revenues collected, funds expended, and balance of the state highway fund.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-06.2-07 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual may not be issued a commercial driver's license unless that individual is a resident of this state; has passed a knowledge and skills test that may include a skills test administered by another state or skills test results electronically submitted by another state, for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 CFR part 383, subparts G and H; and has satisfied all other requirements of state and federal law, including the Commercial Motor Vehicle Safety Act. The tests must be prescribed and conducted by the director. The applicant shall pay the fee listed in section ~~39-06.2-1939-06-49~~ for each of the tests.

**SECTION 3. AMENDMENT.** Subsection 2 of section 39-06.2-08 of the North Dakota Century Code is amended and reenacted as follows:

2. The application must be accompanied by an application fee listed in section ~~39-06.2-1939-06-49~~. The application must contain any other information as the director may require to improve identity security. The director shall require an applicant for a commercial license or commercial learner's permit to provide documentary evidence that confirms to the satisfaction of the director the true identity, date of birth, and legal presence of the applicant and provide a social security card or other satisfactory evidence of a social security number and proof of residence address, if not previously provided or if there are changes to the information already on file.

**SECTION 4. AMENDMENT.** Subdivision c of subsection 3 of section 39-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

- c. Other restrictions may be placed upon a commercial driver's license, under section 39-06-17. The applicant shall pay a fee listed in section ~~39-06.2-19~~39-06-49 for each endorsement.

**SECTION 5. AMENDMENT.** Section 39-06.2-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-09.1. Nondomiciled commercial license.**

1. The department may issue a nondomiciled commercial driver's license to an applicant who does not present a social security card as required by section 39-06.2-08 but who otherwise meets the requirements for a nondomiciled commercial driver's license. A license issued under this subsection is valid only during the period of time of the applicant's authorized stay in the United States. The license may be renewed only upon presentation of valid documentary evidence that the status has been extended. The department shall renew without a skills or knowledge test a nondomiciled commercial license that has been expired for a duration not longer than one year.
2. The fee for a nondomiciled commercial driver's license is listed in section ~~39-06.2-19~~39-06-49.

**SECTION 6. AMENDMENT.** Section 39-06.2-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-13.1. Driving record information to be provided.**

Notwithstanding any other provision of law and upon payment of a fee listed in section ~~39-06.2-19~~39-06-49, the director shall provide full information regarding the driving record of an individual who has been issued a commercial driver's license to an employer or to a prospective employer if the individual has given written consent to the prospective employer for this information.

**SECTION 7. AMENDMENT.** Section 39-06.2-19 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-19. Fees - Deposit in highway fund.**

1. All money received under this chapter must be paid monthly to the highway fund in the state treasury.
2. The fee for:
  - a. ~~A commercial driver's license test is five dollars.~~
  - b. ~~An application for a commercial driver's license or permit is fifteen dollars.~~
  - c. ~~Each endorsement is three dollars.~~
  - d. ~~A nonresident commercial driver's license is twenty dollars.~~
  - e. ~~The driving record for an employer or prospective employer is three dollars.~~Fees must be assessed in accordance with section 39-06-49.

**SECTION 8. AMENDMENT.** Subsections 5 and 6 of section 39-08-13 of the North Dakota Century Code are amended and reenacted as follows:

5. Upon affirmation by a party to the accident, a party's legal representative, or the insurer of any party to the accident that the investigating officer's opinion is material to a determination of liability and upon payment of ~~the fee of five dollars listed in section 39-06-49,~~ the director or investigating agency shall release a completed copy of the investigating officer's opinion to the entity requesting the information. The request must be made on an appropriate form approved by the director.
6. Upon request of any person and upon payment of ~~the fee of two dollars listed in section 39-06-49,~~ the director or the law enforcement agency may furnish to a requester a copy of that portion of an investigating officer's accident report which does not disclose the opinion of the reporting officer or contain any exempt information that may not be disclosed, if the report shows that the accident is one for which a driver is required to file a report under section 39-08-09.

**SECTION 9. AMENDMENT.** Subsection 3 of section 39-16-03 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~A~~~~The fee of three dollars listed under section 39-06-49~~ must be paid for each abstract of any operating record, ~~operating record,~~ complete operating record, or record of clearance. A reasonable fee must be paid for each source document. The director may not assess a fee to a law enforcement agency, a judicial officer, or another licensing jurisdiction. The director shall send an additional copy of the abstract, source document if requested in aggregate form, or record of clearance to the driver whose record was requested, accompanied by a statement identifying the person making the request, identifying the person for whom or which the request is made, identifying the intended recipient of the record, and providing the reason for the request. An additional copy of the abstract or record of clearance may not be sent to a driver if the request for the record was made by the federal bureau of investigation or the United States central intelligence agency, or agents, or by any law enforcement agency or judicial officer.

Disapproved March 21, 2019

Filed April 16, 2019

**CHAPTER 530****SENATE BILL NO. 2015**

(Appropriations Committee)

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 a continuing appropriation; to authorize a full-time equivalent position; to provide for a transfer; to create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to the recognition of legacy fund earnings; to amend and reenact section 6-09-49, section 15.1-18-10 as amended by section 18 of Senate Bill No. 2013, as approved by the sixty-sixth legislative assembly, sections 48-10-02 and 48-10-03, subsection 2 of section 54-06-24, section 54-06-30, and section 54-09-05 as amended by section 5 of Senate Bill No. 2002, as approved by the sixty-sixth legislative assembly, of the North Dakota Century Code, section 23 of House Bill No. 1003, as approved by the sixty-sixth legislative assembly, section 23 of House Bill No. 1014, as approved by the sixty-sixth legislative assembly, sections 1, 2, and 17 of House Bill No. 1018, as approved by the sixty-sixth legislative assembly, and section 18 of Senate Bill No. 2012, as approved by the sixty-sixth legislative assembly, relating to the infrastructure revolving loan fund, specialty area teacher qualifications, capitol grounds planning commission spending limits and authority to accept gifts, the state employee suggestion incentive program, state employee performance bonuses, the salary of the secretary of state, higher education line item transfer authority, a department of commerce nonresident nurse employment recruitment program; and a statewide plan for individuals in institutions for mental disease; to repeal section 54-06-24 of the North Dakota Century Code, relating to the state employee suggestion incentive program; to provide compensation guidelines; to provide a statement of legislative intent; to provide for a legislative management legacy fund earnings committee; to provide for a legislative management study; to provide for a report; to provide an exemption; to provide an effective date; and declare an emergency.

VETO

May 2, 2019

The Honorable Brent Sanford  
President of the Senate  
North Dakota Senate  
State Capitol  
Bismarck, ND 58505

Re: Senate Bill 2015

Dear President Sanford:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 19, Recognition of legacy fund earnings for budget purposes, of Senate Bill 2015. Section 19 circumvents constitutional requirements for Legacy Fund earnings and ignores all generally accepted accounting principles by failing to recognize the earnings in the biennium in which they are received. The people of North Dakota spoke clearly when they approved the Legacy Fund measure in 2010, instructing, as outlined in Article X, Section 26 of the North Dakota Constitution that the "state treasurer shall transfer earnings of the North Dakota legacy fund accruing . . . to the state general fund at the end of each biennium."

Section 19 manipulates the recognition of state revenues which artificially reduces the balance of the general fund by hundreds of millions of dollars. It misleads legislators tasked with voting on appropriation bills and taxpayers who deserve to know the true financial status of the state.

For the reasons stated above, Section 19 of Senate Bill 2015 is vetoed.

Sincerely,

Doug Burgum  
Governor

Disapproved May 2, 2019

Filed May 2, 2019

NOTE: For the full text of Senate Bill No. 2015, including section 19, see chapter 41

# MEASURES APPROVED OVER GOVERNOR'S VETO

## CHAPTER 531

### SENATE BILL NO. 2055

(Senator Wardner  
(Representative Pollert)

AN ACT to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to the establishment of the budget section; to amend and reenact sections 15-03-04, 15-10-12.1, 20.1-02-05.1, 20.1-02-16.1, 25-04-02.2, 37-17.1-27, 40-23-22.1, 47-30.1-24.1, 48-01.2-25, subsection 16 of section 50-06-05.1, subsection 18 of section 50-06-05.1, and sections 54-06-37, 54-27-22, 54-27-23, 54-44.1-13.1, 54-59-05, and 65-08.1-02 of the North Dakota Century Code, relating to agency requests for budget section approval; and to repeal section 1 of chapter 67 of the 2013 Session Laws, relating to the authority of the state board of agricultural research and education to sell certain real property.

VETO

April 9, 2018

The Honorable Brent Sanford  
President of the Senate  
North Dakota Senate  
State Capitol  
Bismarck, ND

Dear President Sanford:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2055 and return it to the Senate unsigned.

Last year, the North Dakota Supreme Court reaffirmed the separation of powers and resolved a dispute between the legislative and executive branches in North Dakota Legislative Assembly v. Burgum, 916 N.W.2d 83. The Court held the legislative assembly "may not delegate to another body the power to make law - to legislate." The Constitution grants the legislative body the authority to create law and appropriate funds. These duties cannot be delegated to a subset of legislators, such as the budget section, which consists of 42 of the legislature's 141 members.

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Senate Bill 2055 is fundamentally flawed because it disregards the Supreme Court's ruling and enshrines the budget section's unconstitutional practice of acting as a mini-legislature.

The purpose, powers and duties of the budget section, as proposed in Section 15 of Senate Bill 2055, ignore the Supreme Court's guidance and further undermine the constitutional duty of the executive branch to carry out laws passed by the full legislature.

Instead of addressing the issue raised in *Assembly v. Burgum* and properly balancing authority between the branches of government, Senate Bill 2055 makes the problem worse. For the reasons explained herein, I return Senate Bill 2055 to the Senate, unsigned.

Regards,

Doug Burgum  
Governor

Disapproved April 9, 2019

Filed April 16, 2019

NOTE: The Governor's veto of Senate Bill No. 2055 was not sustained. For the text of Senate Bill No. 2055 as approved, see chapter 438.



# INITIATED MEASURES APPROVED

## CHAPTER 532

### PERSONALIZED VEHICLE PLATES FOR VOLUNTEER EMERGENCY RESPONDERS

This initiated measure would add a new section to chapter 39-04 of the North Dakota Century Code requiring the Department of Transportation to issue red personalized vehicle plates to volunteer emergency responders. The plates would be provided at no cost to the volunteers and would serve as an entrance pass to all North Dakota state parks. Qualifications and verification procedures for the plates would be designated by the Department of Transportation in cooperation with the volunteer organizations.

#### **BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

#### **Special vehicle license plates for volunteer emergency responders.**

Upon application, the director shall issue red personalized plates to volunteer emergency responders at no initial or annual cost to the volunteers. Volunteers shall include fire fighters and emergency medical responders. Qualified applicants are eligible to receive one set of plates. Plates may not be displayed on a vehicle with a registered gross weight exceeding 20,000 pounds. The first three digits of the plate are the last three digits of the zip code where the volunteer's department is located. The remaining space may contain up to three characters of the volunteer's choosing. This plate serves as an entrance pass to all North Dakota state parks. In cooperation with the volunteer organizations, the director shall designate qualifications and verification procedures for the plates issued under this section.

Approved November 6, 2018

203,634 to 112,964

NOTE: This was measure No. 4 on the general election ballot.

# INITIATED MEASURES DISAPPROVED

## CHAPTER 533

### LEGALIZATION OF MARIJUANA

This initiated measure would amend the North Dakota Century Code by removing hashish, marijuana, and tetrahydrocannabinols from the list of schedule I controlled substances in section 19-03.1-05; adding penalties for individuals under the age of twenty-one in possession of, or attempting to distribute, marijuana; and adding penalties for individuals who distribute marijuana to anyone under the age of twenty-one. It would amend the definition for drug paraphernalia in section 19-03.4-01 to only apply to non-marijuana controlled substances. It would amend section 25-03.1-45 to create a process to automatically expunge the record of an individual who has a drug conviction for a controlled substance that has been legalized; create an appeals process for an individual who believes the state did not expunge a record properly; and eliminate the state's sovereign immunity for damages resulting from expungement lawsuits. It would create chapter 66-01 to define the terms marijuana and marijuana paraphernalia; to prevent prosecution for non-violent marijuana related activity; and to nullify and repeal any North Dakota Century Code language which conflicts with chapter 66-01.

#### BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

**SECTION 1.** Section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **19-03.1-05. Schedule I.**

1. The controlled substances listed in this section are included in schedule I.
2. Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:
  - a. Acetylmethadol.
  - b. Allylprodine.
  - c. Alphacetylmethadol.
  - d. Alphameprodine.
  - e. Alphamethadol.

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- f. Benzethidine.
  - g. Betacetylmethadol.
  - h. Betameprodine.
  - i. Betamethadol.
  - j. Betaprodine.
  - k. Clonitazene.
  - l. Dextromoramide.
  - m. Diampromide.
  - n. Diethylthiambutene.
  - o. Difenoxylin.
  - p. Dimenoxadol.
  - q. Dimepheptanol.
  - r. Dimethylthiambutene.
  - s. Dioxaphetyl butyrate.
  - t. Dipipanone.
  - u. Ethylmethylthiambutene.
  - v. Etonitazene.
  - w. Etoxidine.
  - x. Furethidine.
  - y. Hydroxypethidine.
  - z. Ketobemidone.
  - aa. Levomoramide.
  - bb. Levophenacetylmorphan.
  - cc. Morpheridine.
  - dd. MPPP (also known as 1-methyl-4-phenyl-4-propionoxypiperidine).
  - ee. Noracymethadol.
    - ff. Norlevorphanol.
  - gg. Normethadone.

- hh. Norpipanone.
- ii. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-acetoxypiperidine).
- jj. Phenadoxone.
- kk. Phenampromide.
- ll. Phenomorphan.
- mm. Phenoperidine.
- nn. Piritramide.
- oo. Proheptazine.
- pp. Properidine.
- qq. Propiram.
- rr. Racemoramide.
- ss. Tilidine.
- tt. Trimeperidine.
- uu. 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700).
- vv. 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (also known as MT-45).
- ww. 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (also known as AH-7921).
- xx. Fentanyl derivatives. Unless specifically excepted or unless listed in another schedule or are not FDA approved drugs, and are derived from N-(1-(2-Phenylethyl)-4-piperidiny)-N-phenylpropanamide (Fentanyl) by any substitution on or replacement of the phenethyl group, any substitution on the piperidine ring, any substitution on or replacement of the propanamide group, any substitution on the anilido phenyl group, or any combination of the above. Examples include:
  - (1) N-[1-(1-methyl-2-phenethyl)-4-piperidiny]-N-phenylacetamide (also known as Acetyl-alpha-methylfentanyl).
  - (2) N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine (also known as Alpha-methylfentanyl).
  - (3) N-[1-methyl-2-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide (also known as Alpha-methylthiofentanyl).
  - (4) N-[1-(2-hydroxy-2-phenethyl)-4-piperidiny]-N-phenylpropanamide (also known as Beta-hydroxyfentanyl).

- (5) N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-phenylpropanamide (also known as Beta-hydroxy-3-methylfentanyl).
  - (6) N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide (also known as 3-Methylfentanyl).
  - (7) N-[3-methyl-1-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide (also known as 3-Methylthiofentanyl).
  - (8) N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidiny]propanamide (also known as Para-fluorofentanyl).
  - (9) N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidiny]propanamide (also known as Thiofentanyl).
  - (10) N-(1-phenylethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (also known as Furanyl Fentanyl).
  - (11) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide; N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide (also known as Butyryl Fentanyl).
  - (12) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide; N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidiny]-N-phenylpropanamide (also known as Beta-Hydroxythiofentanyl).
  - (13) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (also known as Acetyl Fentanyl).
  - (14) N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]prop-2-enamide (also known as Acrylfentanyl).
  - (15) N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny]-pentanamide (also known as Valeryl Fentanyl).
4. Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Acetorphine.
  - b. Acetyldihydrocodeine.
  - c. Benzylmorphine.
  - d. Codeine methylbromide.
  - e. Codeine-N-Oxide.
  - f. Cyprenorphine.
  - g. Desomorphine.
  - h. Dihydromorphine.

- i. Drotebanol.
  - j. Etorphine (except hydrochloride salt).
  - k. Heroin.
  - l. Hydromorphinol.
  - m. Methyldesorphine.
  - n. Methyldihydromorphine.
  - o. Morphine methylbromide.
  - p. Morphine methylsulfonate.
  - q. Morphine-N-Oxide.
  - r. Myrophine.
  - s. Nicocodeine.
  - t. Nicomorphine.
  - u. Normorphine.
  - v. Pholcodine.
  - w. Thebacon.
5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):
- a. Alpha-ethyltryptamine, its optical isomers, salts, and salts of isomers (also known as etryptamine;  $\alpha$ -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).
  - b. Alpha-methyltryptamine.
  - c. 4-methoxyamphetamine (also known as 4-methoxy- $\alpha$ -methylphenethylamine; paramethoxyamphetamine; PMA).
  - d. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy- $\alpha$ -methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA).
  - e. Hashish.
- f.e. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).

- g-f. Lysergic acid diethylamide.
- h. Marijuana.
- i-g. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro- 6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
- j-h. Peyote (all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or its extracts).
- k-i. N-ethyl-3-piperidyl benzilate.
- l-j. N-methyl-3-piperidyl benzilate.
- m-k. Psilocybin.
- n. ~~Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:~~
- ~~(1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers. Other names: Delta-9 tetrahydrocannabinol.~~
  - ~~(2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.~~
  - ~~(3) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.~~
- ~~(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)~~
- o-l. Cannabinoids, synthetic. It includes the chemicals and chemical groups listed below, including their homologues, salts, isomers, and salts of isomers. The term "isomer" includes the optical, position, and geometric isomers.
- (1) Indole carboxaldehydes. Any compound structurally derived from 1H-indole-3-carboxaldehyde or 1H-2-carboxaldehyde substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranlylmethyl, benzyl, or halo benzyl group; and, at the hydrogen of the carboxaldehyde by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:
    - (a) Substitution to the indole ring to any extent; or

- (b) Substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent; or
- (c) A nitrogen heterocyclic analog of the indole ring; or
- (d) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
- (e) Examples include:
- [1] 1-Pentyl-3-(1-naphthoyl)indole - Other names: JWH-018 and AM-678.
  - [2] 1-Butyl-3-(1-naphthoyl)indole - Other names: JWH-073.
  - [3] 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole - Other names: JWH-081.
  - [4] 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole - Other names: JWH-200.
  - [5] 1-Propyl-2-methyl-3-(1-naphthoyl)indole - Other names: JWH-015.
  - [6] 1-Hexyl-3-(1-naphthoyl)indole - Other names: JWH-019.
  - [7] 1-Pentyl-3-(4-methyl-1-naphthoyl)indole - Other names: JWH-122.
  - [8] 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole - Other names: JWH-210.
  - [9] 1-Pentyl-3-(4-chloro-1-naphthoyl)indole - Other names: JWH-398.
  - [10] 1-(5-fluoropentyl)-3-(1-naphthoyl)indole - Other names: AM-2201.
  - [11] 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole - Other names: RCS-8.
  - [12] 1-Pentyl-3-(2-methoxyphenylacetyl)indole - Other names: JWH-250.
  - [13] 1-Pentyl-3-(2-methylphenylacetyl)indole - Other names: JWH-251.
  - [14] 1-Pentyl-3-(2-chlorophenylacetyl)indole - Other names: JWH-203.
  - [15] 1-Pentyl-3-(4-methoxybenzoyl)indole - Other names: RCS-4.
  - [16] (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole) - Other names: AM-694.



- [17] (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone - Other names: WIN 48,098 and Pravadoline.
- [18] (1-Pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone -- Other names: UR-144.
- [19] (1-(5-fluoropentyl)indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: XLR-11.
- [20] (1-(2-morpholin-4-ylethyl)-1H-indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: A-796,260.
- [21] (1-(5-fluoropentyl)-1H-indazol-3-yl)(naphthalen-1-yl)methanone -- Other names: THJ-2201.
- [22] 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone -- Other names: THJ-018.
- [23] (1-(5-fluoropentyl)-1H-benzo[d]imidazol-2-yl)(naphthalen-1-yl)methanone - Other names: FUBIMINA.
- [24] 1-[(N-methylpiperidin-2-yl)methyl]-3-(adamant-1-oyl) indole - Other names: AM-1248.
- [25] 1-Pentyl-3-(1-adamantoyl)indole - Other names: AB-001 and JWH-018 adamantyl analog.
- (2) Indole carboxamides. Any compound structurally derived from 1H-indole-3-carboxamide or 1H-2-carboxamide substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and, at the nitrogen of the carboxamide by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:
- Substitution to the indole ring to any extent; or
  - Substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent; or
  - A nitrogen heterocyclic analog of the indole ring; or
  - A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
- (e) Examples include:
- [1] N-Adamantyl-1-pentyl-1H-indole-3-carboxamide - Other names: JWH-018 adamantyl carboxamide, APICA, SDB-001, and 2NE1.

- [2] N-Adamantyl-1-fluoropentylindole-3-carboxamide - Other names: STS-135.
- [3] N-Adamantyl-1-pentyl-1H-Indazole-3-carboxamide - Other names: AKB 48 and APINACA.
- [4] N-1-naphthalenyl-1-pentyl-1H-indole-3-carboxamide - Other names: NNEI and MN-24.
- [5] N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide - Other names: ADBICA.
- [6] (S)-N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide - Other names: AB-PINACA.
- [7] N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide - Other names: AB-FUBINACA.
- [8] (S)-N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide - Other names: 5-Fluoro AB-PINACA.
- [9] N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide - Other names: ADB-PINACA.
- [10] N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide - Other names: AB-CHMINACA.
- [11] N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide - Other names: ADB-FUBINACA.
- [12] N-((3s,5s,7s)-adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide - Other names: FUB-AKB48 and AKB48 N-(4-fluorobenzyl) analog.
- [13] 1-(5-fluoropentyl)-N-(quinolin-8-yl)-1H-indazole-3-carboxamide - Other names: 5-fluoro-THJ.
- [14] (S)-methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate - Other names: 5-fluoro AMB.
- [15] methyl (1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate - Other names: FUB-AMB.
- [16] N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1 H-indazole-3-carboxamide - Other names: MAB-CHMINACA and ADB-CHMINACA.
- [17] Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate - Other names: 5F-ADB and 5F-MDMB-PINACA.

- [18] N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide - Other names: 5F-APINACA and 5F-AKB48.
- [19] Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate - Other names: MDMB-CHMICA and MMB-CHMINACA.
- [20] Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate - Other names: MDMB-FUBINACA.
- (3) Indole carboxylic acids. Any compound structurally derived from 1H-indole-3-carboxylic acid or 1H-2-carboxylic acid substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and, at the hydroxyl group of the carboxylic acid by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:
- (a) Substitution to the indole ring to any extent; or
- (b) Substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, propionaldehyde group to any extent; or
- (c) A nitrogen heterocyclic analog of the indole ring; or
- (d) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
- (e) Examples include:
- [1] 1-(cyclohexylmethyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester - Other names: BB-22 and QUCHIC.
- [2] naphthalen-1-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate - Other names: FDU-PB-22.
- [3] 1-pentyl-1H-indole-3-carboxylic acid 8-quinolinyl ester - Other names: PB-22 and QUPIC.
- [4] 1-(5-Fluoropentyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester - Other names: 5-Fluoro PB-22 and 5F-PB-22.
- [5] quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate - Other names: FUB-PB-22.
- [6] naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate - Other names: NM2201.
- (4) Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-

(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

- (a) 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane - Other names: JWH-175.
- (b) 1-Pentyl-1H-indol-3-yl-(4-methyl-1-naphthyl)methane - Other names: JWH-184.
- (5) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone - Other names: JWH-307.
- (6) Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane - Other names: JWH-176.
- (7) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not substituted in the cyclohexyl ring to any extent. Examples include:
- (a) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: CP 47,497.
- (b) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: Cannabicyclohexanol and CP 47,497 C8 homologue.
- (c) 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol - Other names: CP 55,940.
- (8) Others specifically named:
- (a) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: HU-210.

- (b) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: Dexanabinol and HU-211.
- (c) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone - Other names: WIN 55,212-2.
- (d) Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone - Other names: CB-13.
- p. Substituted phenethylamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from phenylethan-2-amine by substitution on the phenyl ring in any of the following ways, that is to say, by substitution with a fused methylenedioxy ring, fused furan ring, or fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems.
- (1) Whether or not the compound is further modified in any of the following ways, that is to say:
- (a) By substitution of phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups;
- (b) By substitution at the 2-position by any alkyl groups; or
- (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl, methylenedioxybenzyl, or methoxybenzyl groups.
- (2) Examples include:
- (a) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine).
- (b) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine).
- (c) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine).
- (d) 2-(2,5-Dimethoxyphenyl)ethanamine (also known as 2C-H or 2,5-Dimethoxyphenethylamine).
- (e) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine).
- (f) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine).

- (g) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine).
- (h) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine).
- (i) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine).
- (j) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine (also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine).
- (k) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine (also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine).
- (l) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine (also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine).
- (m) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane (also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine).
- (n) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine (also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine).
- (o) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-B-NBOMe; 2,5B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine).
- (p) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-I-NBOMe; 2,5I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine).
- (q) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine (also known as mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine).
- (r) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-C-NBOMe; 2,5C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine).
- (s) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine (also known as 2CB-5-hemiFLY).
- (t) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine (also known as 2C-B-FLY).
- (u) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyranof[2,3-g]chromen-5-yl)ethanamine (also known as 2C-B-butterFLY).
- (v) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane (also known as 2C-B-FLY-NBOMe).

- (w) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine (also known as bromo-benzodifuranyl-isopropylamine or bromo-dragonFLY).
  - (x) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine (also known as 2C-I-NBOH or 2,5I-NBOH).
  - (y) 5-(2-Aminopropyl)benzofuran (also known as 5-APB).
  - (z) 6-(2-Aminopropyl)benzofuran (also known as 6-APB).
  - (aa) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran (also known as 5-APDB).
  - (bb) 6-(2-Aminopropyl)-2,3,-dihydrobenzofuran (also known as 6-APDB).
  - (cc) 2,5-dimethoxy-amphetamine (also known as 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA).
  - (dd) 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).
  - (ee) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).
  - (ff) 5-methoxy-3,4-methylenedioxy-amphetamine.
  - (gg) 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM and STP).
  - (hh) 3,4-methylenedioxy amphetamine (also known as MDA).
  - (ii) 3,4-methylenedioxymethamphetamine (also known as MDMA).
  - (jj) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA).
  - (kk) 3,4,5-trimethoxy amphetamine.
  - (ll) Mescaline (also known as 3,4,5-trimethoxyphenethylamine).
- q. Substituted tryptamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from 2-(1H-indol-3-yl)ethanamine (i.e., tryptamine) by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha-position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups. Examples include:
- (1) 5-methoxy-N,N-diallyltryptamine (also known as 5-MeO-DALT).
  - (2) 4-acetoxy-N,N-dimethyltryptamine (also known as 4-AcO-DMT or O-Acetylpsilocin).
  - (3) 4-hydroxy-N-methyl-N-ethyltryptamine (also known as 4-HO-MET).

- (4) 4-hydroxy-N,N-diisopropyltryptamine (also known as 4-HO-DIPT).
  - (5) 5-methoxy-N-methyl-N-isopropyltryptamine (also known as 5-MeO-MiPT).
  - (6) 5-methoxy-N,N-dimethyltryptamine (also known as 5-MeO-DMT).
  - (7) Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).
  - (8) 5-methoxy-N,N-diisopropyltryptamine (also known as 5-MeO-DiPT).
  - (9) Diethyltryptamine (also known as N,N-Diethyltryptamine; DET).
  - (10) Dimethyltryptamine (also known as DMT).
  - (11) Psilocyn.
    - r. 1-[3-(trifluoromethylphenyl)]piperazine (also known as TFMPP).
    - s. 1-[4-(trifluoromethylphenyl)]piperazine.
    - t. 6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (also known as 5,6-Methylenedioxy-2-aminoindane or MDAI).
    - u. 2-(Ethylamino)-2-(3-methoxyphenyl)cyclohexanone (also known as Methoxetamine or MXE).
    - v. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).
    - w. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).
    - x. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienylanalog of phencyclidine; TPCP, TCP).
    - y. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).
    - z. *Salvia divinorum*, salvinorin A, or any of the active ingredients of *salvia divinorum*.
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.



- d. Methaqualone.
7. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
- a. Aminorex (also known as 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine).
- b. Cathinone.
- c. Substituted cathinones. Any compound, material, mixture, preparation, or other product, unless listed in another schedule or an approved food and drug administration drug (e.g., bupropion, pyrovalerone), structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
- (1) By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
  - (2) By substitution at the 3-position with an acyclic alkyl substituent;
  - (3) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; or
  - (4) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

Some trade or other names:

- (a) 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone (also known as MDPPP).
- (b) 3,4-Methylenedioxy-N-ethylcathinone (also known as Ethylone, MDEC, or bk-MDEA).
- (c) 3,4-Methylenedioxy-N-methylcathinone (also known as Methylone or bk-MDMA).
- (d) 3,4-Methylenedioxyprovalerone (also known as MDPV).
- (e) 3,4-Dimethylmethcathinone (also known as 3,4-DMMC).
- (f) 2-(methylamino)-1-phenylpentan-1-one (also known as Pentadrone).
- (g) 2-Fluoromethcathinone (also known as 2-FMC).
- (h) 3-Fluoromethcathinone (also known as 3-FMC).
- (i) 4-Methylethcathinone (also known as 4-MEC and 4-methyl-N-ethylcathinone).

- (j) 4-Fluoromethcathinone (also known as Flephedrone and 4-FMC).
  - (k) 4-Methoxy-alpha-pyrrolidinopropiophenone (also known as MOPPP).
  - (l) 4-Methoxymethcathinone (also known as Methedrone; bk-PMMA).
  - (m) 4<sup>1</sup>-Methyl-alpha-pyrrolidinobutiophenone (also known as MPBP).
  - (n) Alpha-methylamino-butyrophenone (also known as Buphedrone or MABP).
  - (o) Alpha-pyrrolidinobutiophenone (also known as alpha-PBP).
  - (p) Alpha-pyrrolidinopropiophenone (also known as alpha-PPP).
  - (q) Alpha-pyrrolidinopentiophenone (also known as Alpha-pyrrolidinovalerophenone or alpha-PVP).
  - (r) Beta-keto-N-methylbenzodioxolylbutanamine (also known as Butylone or bk-MBDB).
  - (s) Ethcathinone (also known as N-Ethylcathinone).
  - (t) 4-Methylmethcathinone (also known as Mephedrone or 4-MMC).
  - (u) Methcathinone.
  - (v) N,N-dimethylcathinone (also known as metamfepramone).
  - (w) Naphthylpyrovalerone (naphyrone).
  - (x) B-Keto-Methylbenzodioxolylpentanamine (also known as Pentylone).
  - (y) 4-Methyl-alpha-pyrrolidinopropiophenone (also known as 4-MePPP and MPPP).
- d. Fenethylline.
  - e. Fluoroamphetamine.
  - f. Fluoromethamphetamine.
  - g. (±)cis-4-methylaminorex (also known as (±)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).
  - h. N-Benzylpiperazine (also known as BZP, 1-benzylpiperazine).
  - i. N-ethylamphetamine.
  - j. N, N-dimethylamphetamine (also known as N,N-alpha-trimethylbenzeneethanamine; N,N-alpha-trimethylphenethylamine).

**SECTION 2.** Section 19-03.1-23 of 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 a person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but a person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. A 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 B felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least three years.
    - (2) For a third or subsequent offense, to imprisonment for ten years.
  - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B 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 second offense, to imprisonment for at least two years.
    - (2) For a third or subsequent offense, to imprisonment for five years.
  - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least three months.
    - (2) For a third offense, to imprisonment for at least six months.
    - (3) For a fourth or subsequent offense, to imprisonment for three years.
  - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsections 1 and 4.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, 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 counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
  - b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.

- c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
4.
    - a. For second or subsequent offenses, in addition to any other penalty imposed under this section, if the person who violates this chapter was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the person is subject to, and the court shall impose a term of imprisonment of at least four years.
    - b. Which is to run consecutively to any other sentence imposed. It is not a defense that the defendant did not know the age of a person protected under subdivision a.
    - c. The penalty in subdivision a does not apply to a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana.
  5. 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 a second or subsequent offense, to imprisonment for at least three years.
    - 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.
  6. Except for a prior conviction equivalent to a misdemeanor violation of subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this title 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, 4, and 5. 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.
  7. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
    - a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
    - b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

8.
  - a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog 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.
  - b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense under this subsection and a class C felony for a second or subsequent offense under this subsection.
  - c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves marijuana.
  - d. A person who violates this subsection regarding possession of marijuana is guilty of a class B misdemeanor.
  - e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.
  - f. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.
  - g. Probation under this subsection may include placement in another facility, treatment program, or drug court. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.
  - h. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.
  - i. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.
9. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation. A court shall order a person who

violates subdivision e of subsection 8 to undergo the drug addiction evaluation.

10. ~~If 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 seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court. Any individual under the age of 21 found in possession, of marijuana shall be held to the same penalties as though they were a minor in possession of alcohol whatever those may be.~~
11. Any individual who distributes marijuana to those under the age of 21, or is an individual under the age of 21 who attempts to distribute marijuana is subject the same penalties as though they were convicted of selling alcohol to a minor whatever those may be.

**SECTION 3.** Section 19-03.4-01 of the North Dakota Century Code is amended and reenacted 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 non-marijuana 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 non-marijuana 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 non-marijuana 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 non-marijuana 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 non-marijuana substances.
5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled non-marijuana substances.
6. Diluents and adulterants, including quinine hydrochloride, mannitol, dextrose, and lactose, used, intended for use, or designed for use in cutting non-marijuana 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 non-marijuana substance.
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 non-marijuana substances.
9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled non-marijuana substances.
10. Containers and other objects used, intended for use, or designed for use in storing or concealing non-marijuana 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. Bonges.
  - 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 a non-marijuana controlled substance, whether or not otherwise lawfully obtained, including anhydrous ammonia, nonprescription medications, methamphetamine precursor drugs, or lawfully dispensed controlled substances.

**SECTION 4.** Section 25-03.1-45 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-45. Expungement of records.**

In this chapter, unless the context otherwise requires, illegitimate drug violation is defined as follows. Any violation in the state of North Dakota, for a controlled substance that has been legalized or for an activity regarding the substance has been legalized, wherein the person has a record of punitive action by the state whether it be a plea deal or conviction.

1. Any individual who has an illegitimate drug conviction as defined in this chapter shall hereby have their records expunged and sealed by the court automatically.
  - a. This process shall occur for those not incarcerated within 30 days of the passage of a law which creates an illegitimate drug conviction.
  - b. This process shall occur, for those incarcerated, no sooner than 30 days after their release from prison and after the passage of a law which has legalized the behavior for which they were incarcerated
  - c. Should an individual have any of their records automatically expunged, the state shall notify the individual of such action and explain the implications of that action within 10 calendar days of the time of expungement via certified mail.
2. Process for appeals
  - a. An individual shall have the right to appeal for expungement if they believe they would qualify but their record has not been expunged after the 30 day time period outlined in this chapter. This appeal shall be filed with the appropriate court, and the individual filing the appeal shall have the right to decide between a jury trial, or direct trial with a judge
    - (1) Upon receiving an appeal request, the state shall establish a court hearing for the appellate in less than 30 calendar days from the filing of the appeal to the court.
    - (2) Should the state be ordered to expunge or seal records as a result of this appeal, the state shall pay all legal expenses for both parties.
3. Penalties
  - a. The State shall waive all sovereign immunity for damages in regard to lawsuits dealing with expungement proceedings.
  - b. Any individual shall have the right to sue in court for damages as a result for failure to properly expunge records.



4. Expungement for mental health reasons.

- a. Following the discharge of a respondent from a treatment facility or the state hospital or the issuance of a court order denying a petition for commitment, a respondent may at any time move to have all court records pertaining to the proceedings expunged on condition that the respondent file a full release of all claims of whatever nature arising out of the proceedings.

**SECTION 5.** Chapter 66.1-01 of the North Dakota Century Code is enacted as follows:

**66-01 01. Definitions**

1. "Marijuana" means any plant in the cannabis family, as well as any substance derived from or contained in the cannabis plant
2. "Marijuana paraphernalia" means any item related to any activity regarding the use, manufacture, distribution, cultivation, or purification of marijuana

**66-01 02. Criminal Penalties**

1. No person over the age of 21 shall be prosecuted in any court for any non-violent marijuana related activity, with the exception of the sale of marijuana to a person under the age of 21. Activities include but are not limited to : growing manufacturing, distributing, selling, or testing of marijuana.
2. No person over the age of 21 shall be prosecuted in any court for any drug paraphernalia relating to any non-violent marijuana activity.

**66-01 03. Statement of Supremacy**

1. In the event of the existence of any language in the North Dakota Century Code which conflicts with this chapter those sections are hereby nullified and repealed.

Disapproved November 6, 2019

132,199 to 193,837

NOTE: This was measure No. 3 on the general election ballot.

# CONSTITUTIONAL AMENDMENTS APPROVED

## CHAPTER 534

### ETHICS COMMISSION

This initiated measure would add a new article to the North Dakota Constitution establishing a North Dakota ethics commission. The commission, using funds provided by the legislature, would be responsible for adopting rules related to corruption, elections, and lobbying and for reporting and investigating alleged violations of those rules and related state laws. The measure would provide for prohibitions for lobbyists related to gift giving and delivery of campaign contributions and prohibitions for public officials against lobbying, use of campaign contributions, and conflicts of interest in certain proceedings. The measure would direct the legislative assembly to enact laws that require electronically accessible public disclosure of the source of funds spent (in any medium and in an amount greater than two hundred dollars) to influence statewide and legislative elections and statewide ballot measures or to lobby or otherwise influence state government action.

#### BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

**SECTION 1.** A new article of the Constitution of the State of North Dakota is created and enacted as follows:

##### **Section 1. Transparency.**

1. The people of North Dakota need information to choose candidates for office, vote on ballot measures, and ensure that their representatives are accountable. This transparency must be sufficient to enable the people to make informed decisions and give proper weight to different speakers and messages. The people therefore have the right to know in a timely manner the source, quantity, timing, and nature of resources used to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, and state government action. This right is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the United States Constitution and shall be construed broadly.
2. The legislative assembly shall implement and enforce this section by enacting, no more than three years after the effective date of this article, laws that require prompt, electronically accessible, plainly comprehensible, public disclosure of the ultimate and true source of funds spent in any medium, in an amount greater than two hundred dollars, adjusted for inflation, to influence any statewide election, election for the legislative assembly, statewide ballot-issue election, or to lobby or otherwise influence state government action. The legislative assembly shall have an ongoing duty to revise these laws as necessary to promote the purposes of this section in light of changes in

technology and political practices. The legislative assembly shall vest by law one or more entities with authority to implement, interpret, and enforce this section and legislation enacted thereunder. If the laws or rules enacted or an implementation, interpretation, or enforcement action taken under this section fail to fully vindicate the rights provided in this section, a resident taxpayer may bring suit in the courts of this state to enforce such rights.

## **Section 2. Lobbyists and Conflicts of Interest.**

1. A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist. These prohibitions do not apply if the lobbyist is an immediate family member of the public official. "Gift," as used in this subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation. However, "gift" does not mean any purely informational material, campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission. Such rules must be adopted within two years after the effective date of this article. So as to allow for the adoption of these rules, these prohibitions shall take effect two years after the effective date of this article. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
2. An elected public official may not be a lobbyist while holding office or for two years after holding office. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
3. A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. "Deliver," as used in this subsection, means to transport, transfer, or otherwise transmit, either physically or electronically. This prohibition does not apply to a person who delivers a campaign contribution to the person's own campaign, or to the campaign of the person's immediate family member. This prohibition shall not be interpreted to prohibit any person from making a campaign contribution or from encouraging others to make a campaign contribution or to otherwise support or oppose a candidate. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
4. A statewide candidate, candidate for the legislative assembly, or public official may not knowingly use a campaign contribution for personal use or enrichment. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
5. Directors, officers, commissioners, heads, or other executives of agencies shall avoid the appearance of bias, and shall disqualify themselves in any quasi-judicial proceeding in which monetary or in-kind support related to that person's election to any office, or a financial interest not shared by the general public as defined by the ethics commission, creates an appearance of bias to a reasonable person. The legislative assembly and the ethics commission shall enforce this provision by appropriate legislation and rules, respectively. So as to allow for the adoption of such legislation or rules, this subsection shall take effect three years after the effective date of this article.

6. Governments of foreign countries, foreign nationals not lawfully admitted for permanent residence in the United States, and corporations organized under the laws of or having their principal place of business in a foreign country, are prohibited from making contributions or expenditures in connection with any statewide election, election for the legislative assembly, or statewide ballot-issue election.

### **Section 3. North Dakota Ethics Commission.**

1. In order to strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government, the North Dakota Ethics Commission is hereby established.
2. The ethics commission may adopt ethics rules related to transparency, corruption, elections, and lobbying to which any lobbyist, public official, or candidate for public office shall be subject, and may investigate alleged violations of such rules, this article, and related state laws. The ethics commission shall maintain a confidential whistleblower hotline through which any person acting in good faith may submit relevant information. The legislative assembly shall provide adequate funds for the proper carrying out of the functions and duties of the commission.
3. The ethics commission shall consist of five members, appointed for four-year terms by consensus agreement of the governor, the majority leader of the senate, and the minority leader of the senate. No member of the ethics commission may hold other public office or be a lobbyist, candidate for public office, or political party official.

### **Section 4. General Provisions.**

1. This article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article. This article shall take effect sixty days after approval.
2. For the purposes of this article, "public office" or "public official" means any elected or appointed office or official of the state's executive or legislative branch, including members of the ethics commission, or members of the governor's cabinet, or employees of the legislative branch, and "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.
3. If any provision of this article is held to be invalid, either on its face or as applied to any person, entity, or circumstance, the remaining provisions, and the application thereof to any person, entity, or circumstance other than those to which it is held invalid, shall not be affected thereby. In any case of a conflict between any provision of this article and any other provision contained in this constitution, the provisions of this article shall control.

Approved November 6, 2018

169,676 to 146,709

NOTE: This was measure No. 1 on the general election ballot

## CHAPTER 535

### CITIZENSHIP REQUIREMENTS FOR VOTING

This initiated measure would amend Article II of the North Dakota Constitution to state that "only a citizen" of the United States is a qualified elector, instead of the current provision that states "every citizen" of the United States is a qualified elector. The measure also would state that only a qualified elector may vote in any general, special, or primary election for a federal, statewide, state legislative, district, county, township, city, or school district office or ballot measure.

#### BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Article II of the Constitution of North Dakota is amended and reenacted as follows:

#### ARTICLE II ELECTIVE FRANCHISE

**Section 1.** The general election of the state shall be held biennially as provided by law.

~~Every~~Only a citizen of the United States, who has attained the age of eighteen years and who is a North Dakota resident, shall be a qualified elector. When an elector moves within the state, he shall be entitled to vote in the precinct from which he moves until he establishes voting residence in another precinct. The legislative assembly shall provide by law for the determination of residence for voting eligibility, other than physical presence. No elector shall lose his residency for voting eligibility solely by reason of his absence from the state.

The legislative assembly shall provide by law for secrecy in voting, for absentee voting, for administration of elections and for the nomination of candidates.

**Section 2.** No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote. No person convicted of a felony shall be qualified to vote until his or her civil rights are restored.

**Section 3.** Only a qualified elector may vote in any general, special, or primary election for a federal, statewide, state legislative, district, county, township, city, or school district office, or for a statewide, district, or political subdivision ballot measure.

Approved November 6, 2018

208,499 to 107,751

NOTE: This was measure No. 2 on the general election ballot.

# CONSTITUTIONAL AMENDMENTS PROPOSED

## CHAPTER 536

### SENATE CONCURRENT RESOLUTION NO. 4016

(Senators Wardner, Bekkedahl, Heckaman)  
(Representatives Mock, Nathe, Roers Jones)

### STATE BOARD OF HIGHER EDUCATION MEMBERSHIP AND MEETING REQUIREMENTS

A concurrent resolution to amend and reenact subsections 2 and 6 of section 6 of article VIII of the Constitution of North Dakota, relating to the membership and meeting requirements of the state board of higher education; to provide for transition; and to provide an effective date.

#### STATEMENT OF INTENT

This measure increases the number of individuals who serve on the state board of higher education from eight to fifteen, increases the term of board membership from four years to six years, requires the board to meet at least annually with the heads of each institution under the board's control, and prohibits state legislators, elected state officials, and full-time state employees from serving on the board.

#### BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to subsections 2 and 6 of section 6 of article VIII of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2020, 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~~fifteen members. The governor shall appoint ~~seven~~fourteen 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~~fourteen appointments are subject to confirmation by the senate. The governor shall appoint as the ~~eighth~~fifteenth member of the board a full-time resident student in good academic standing at an institution under the jurisdiction of the state board.

- b. An individual serving as a member of the legislative assembly or in an elected statewide office may not serve as a member of the state board of higher education.
- c. Except for the student member,~~no:~~
- (1) No more than 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; and~~
  - (2) A person employed by the state, including a person employed full time by any institution under the control of the board shall may not serve as a member of the board and no. An employee of any such an institution may be under the control of the board is not eligible for membership on the state board of higher education for a period of two years following the termination of employment.
- d. 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~~united or its successor organization,~~ the chief justice of the supreme court~~secretary of state,~~ 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~~fourteen~~ members. The governor shall ensure that the board membership is maintained in a balanced and representative manner. The~~Other than the student member, the~~ term of office of members appointed to fill vacancies at the expiration of said~~the~~ terms shall be for four~~is~~ six years, and in the case of vacancies otherwise arising, appointments shall~~must~~ 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 full terms; however, the terms may not be served consecutively. If a member is appointed to fill a vacancy and serves two~~three~~ or more years of that term, the member is deemed to have served one full term.
- b. In the event
- e. On or before July first of each year, 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.
- f. If any nomination made by the governor is not consented to and confirmed by the senate, the governor again shall again nominate a candidate selected from a new list. The nomination shall~~must~~ be submitted to the senate for confirmation and the proceedings shall~~must~~ continue until an appointee has been confirmed by the senate or the session of the legislature~~legislative assembly~~ has adjourned.
- e.g. If a term expires or a vacancy occurs when the legislature~~legislative assembly~~ 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~~legislative assembly~~, 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~~ must be followed as are set forth in this section. If the legislature~~legislative assembly~~ 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.~~

**SECTION 2. AMENDMENT.** Subsection 6 of section 6 of article VIII of the Constitution of North Dakota is amended and reenacted as follows:

6. a. ~~The state board of higher education shall hold its first meeting at the office of the state board of administration at Bismarck, on the 6th day of July, 1939, and shall organize and elect one of its members as president of such board for a term of one year. It shall also at said meeting, or as soon thereafter as may be practicable, elect a competent person as secretary, who shall reside during his term of office in the city of Bismarck, North Dakota. Said secretary shall hold office at the will of the board. As soon as said board is established and organized, it shall assume all the powers and perform all the duties now conferred by law upon the board of administration in connection with the several institutions hereinbefore mentioned, and the said board of administration shall immediately upon the organization of said state board of higher education, surrender and transfer to said state board of higher education all duties, rights, and powers granted to it under the existing laws of this state concerning the institutions hereinbefore mentioned, together with all property, deeds, records, reports, and appurtenances of every kind belonging or appertaining to said institutions.~~
- b. ~~The said state board of higher education shall have~~ has full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions. In furtherance of its powers, the state board of higher education shall ~~have the power to~~ may delegate to its employees details of the administration of the institutions under its control. ~~The said state board of higher education shall have full authority to~~ may organize or reorganize within constitutional and statutory limitations, the work of each institution under its control, and do each and everything necessary and proper for the efficient and economic administration of said state educational ~~the~~ the institutions. ~~The board shall meet at least annually with the head of each institution under its control.~~
- e-~~b~~. ~~Said~~ The board shall prescribe for all of said institutions standard systems of accounts and records and shall biennially, and within six ~~(6)~~ months



immediately preceding the regular session of the legislature legislative assembly, shall make a report to the governor, covering in detail the operations of the educational institutions under its control.

- d.c. ~~It shall be the duty of the heads~~The head of the several state institutions hereinbefore mentioned, ~~to each institution under the board's control shall submit the budget requests~~request for the biennial appropriations for said institutions ~~the institution to said~~ the state board of higher education; and ~~said~~ the state board of higher education shall consider said ~~budgets and shall revise the same and revise each budget as in its judgment shall be~~ for in the best interests of the educational system of the state; ~~and thereafter the~~ The state board of higher education shall prepare and present to the state budget board and to the legislature legislative assembly a single unified budget covering the needs of all the institutions under its control. "Said budget shall be prepared and presented by the board of administration until the state board of higher education organizes as provided in subsection 6a." The appropriations for all of said institutions shall must be contained in one legislative measure. The budgets and appropriation measures for the agricultural experiment stations and ~~their~~ the substations and the extension division of the North Dakota state university of agriculture and applied science may be separate from those of state educational institutions.
- e.d. The said state board of higher education shall ~~have~~ has the control of the expenditure of the funds belonging to, and allocated to ~~such~~ institutions and also those appropriated by the legislature legislative assembly, for the institutions of higher education in this state; provided, however, that funds appropriated by the legislature legislative assembly and specifically designated for any one or more of ~~such~~ institutions, shall may not be used for any other institution.

**SECTION 3. EFFECTIVE DATE - TRANSITION.** This measure becomes effective June 30, 2021. Any member of the state board of higher education serving a term on the board on the effective date of this measure whose term does not expire on June 30, 2021, may serve the remainder of that member's term. For those board positions expiring on June 30, 2021, and for the seven new positions on the board created by this measure, the governor shall appoint individuals to fill those positions in accordance with this measure, and the terms of those appointees must be staggered so not more than three positions expire in any year. To accomplish the staggering, the initial term of those appointees may be for less than six years.

Filed April 10, 2019

NOTE: This will be measure No. 1 on the 2020 general election ballot.

## CHAPTER 537

### SENATE CONCURRENT RESOLUTION NO. 4001

(Senators Hogue, Dever, G. Lee)  
(Representatives K. Koppelman, Louser, Nathe)

### SUBMISSION OF VOTER-APPROVED CONSTITUTIONAL MEASURES TO LEGISLATIVE ASSEMBLY

A concurrent resolution to amend and reenact section 9 of article III of the Constitution of North Dakota, relating to the process for approving constitutional amendments.

#### STATEMENT OF INTENT

This measure requires an initiated constitutional measure approved by voters to be submitted to the subsequent legislative assembly. Under this measure, if the legislative assembly does not approve the constitutional measure, the measure will be placed on the ballot again, and, if approved by the voters, will become effective. The measure also requires constitutional amendments to be submitted to voters only at general elections.

#### BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 9 of article III of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2020, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 9 of article III of the Constitution of North Dakota is amended and reenacted as follows:

**Section 9.** A constitutional amendment may be proposed by initiative petition. If signed by electors equal in number to four percent of the resident population of the state at the last federal decennial census, the petition for a constitutional amendment may be submitted to the secretary of state. An initiative to amend the constitution may be placed on the ballot only at a general election. If electors approve an initiative for a constitutional amendment, the amendment must be submitted to the subsequent legislative assembly. If the initiative is approved by a majority of members of each house in the legislative assembly, the initiative is deemed enacted. If the legislative assembly does not approve the initiative, the initiative must be placed on the ballot at the next general election. If the majority of votes cast on the initiative are affirmative, the initiative is deemed enacted. All other provisions relating to initiative measures apply hereteto initiative measures for constitutional amendments.

Filed April 17, 2019

NOTE: This will be measure No. 2 on the 2020 general election ballot.

# HOUSE CONCURRENT RESOLUTIONS

## CHAPTER 538

### HOUSE CONCURRENT RESOLUTION NO. 3001

(Legislative Management)  
(Budget Section)

A concurrent resolution authorizing the Budget Section of the Legislative Management 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 program money expected for the next biennium by the Department of Commerce; and

**WHEREAS**, the Sixty-sixth Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by Congress after recess or adjournment of the Legislative Assembly; and

**WHEREAS**, the Legislative Assembly will not meet in regular session during 2020, and thus its public hearing responsibility for grants not approved by the Sixty-sixth Legislative Assembly must be delegated to a legislative entity.

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Department of Commerce appropriation bill enacted by the Legislative Assembly is the Legislative Assembly's approval of and contains directions regarding the use of community services block grant program money for the period ending September 30, 2021; and

**BE IT FURTHER RESOLVED**, that the Budget Section of the Legislative Management may hold the public legislative hearings required for the receipt of additional block grants or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes; and

**BE IT FURTHER RESOLVED**, that the authority granted by this resolution is in effect during the period from the recess or adjournment of the Sixty-sixth Legislative Assembly through September 30, 2021, and the Budget Section may provide public notice and hold the hearings authorized by this resolution using the methods and procedures it deems appropriate.

Filed March 11, 2019

## CHAPTER 539

### HOUSE CONCURRENT RESOLUTION NO. 3004

(Representative Toman)

A concurrent resolution requesting the Legislative Management to study the potential benefit value of blockchain technology implementation and utilization in state government administration and affairs.

**WHEREAS**, blockchain is a decentralized distributed ledger technology which allows creation, validation, and encrypted transaction of digital assets to happen and be recorded in an incorruptible way; and

**WHEREAS**, blockchain allows peer-to-peer and business-to-business transactions to be completed without the need for a third party, which is often a bank, effectively reducing transaction costs; and

**WHEREAS**, recording transactions through blockchain virtually eliminates human error and protects the data from possible tampering; and

**WHEREAS**, a hyperconnected government enables unprecedented transparency and efficiency where services are tailored to an individual's needs; and

**WHEREAS**, new blockchain systems could focus on other types of transactions, such as exchanging titles for houses or cars, essentially decentralizing the infrastructure for these sales and making them faster and cheaper compared to what would normally be a slow complicated trudge through bureaucracy; and

**WHEREAS**, Arizona, California, Hawaii, Maine, Maryland, Nebraska, Nevada, New Jersey, New York, Tennessee, Vermont, Virginia, and Wyoming have introduced legislation for possible implementation of blockchain in state government; and

**WHEREAS**, West Virginia and Utah have begun blockchain pilot projects related to voting at primary elections, Delaware and Illinois have sponsored initiatives on blockchain, and the Governor of Colorado has created a blockchain-related council;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying the potential benefit value of blockchain technology implementation and utilization in state government administration and affairs, including a comprehensive assessment of government areas in which blockchain technology can assist with agency affairs and administration, accounting and budgeting, transactions, creating necessary audit trails, authorizing a decision, authenticating authority, and establishing a system of record; and an analytical evaluation of implementing smart contracts to improve efficiencies in contract enforcement, the cost-effectiveness and increased security of utilizing a blockchain technology electronic voting system, and the exploration of other eGovernment services and applications, such as identity management, tax collection, land registry, distribution of benefits, and digital exchanges; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendation, to the Sixty-seventh Legislative Assembly.

Filed April 3, 2019

## CHAPTER 540

### HOUSE CONCURRENT RESOLUTION NO. 3005

(Representatives Schatz, Kempenich, Strinden, Dockter)  
(Senators Krebsbach, Kannianen, Oehlke)

A concurrent resolution urging Congress and the President of the United States to protect American consumers by advancing a coordinated effort to address, promote, and provide an effective and innovative solution to combat illegal, unsolicited, and unwanted robocalls and "call spoofing".

**WHEREAS**, a robocall is an automated telephone call delivering a recorded message, often on behalf of a telemarketing company or as part of a fraudulent scheme; and

**WHEREAS**, an estimated 98 million robocalls are received daily in the United States; and

**WHEREAS**, the Federal Communications Commission receives approximately 200,000 complaints each year regarding robocalls; and

**WHEREAS**, in 2017, the Federal Trade Commission received 4.5 million complaints about unwanted calls; and

**WHEREAS**, according to the Federal Trade Commission, fraud from illegal, unsolicited, and unwanted calls amounts to approximately \$9.5 billion annually; and

**WHEREAS**, small businesses in the United States waste an estimated 20 million hours per year dealing with illegal, unsolicited, and unwanted robocalls, translating to at least \$475 million in lost productivity annually; and

**WHEREAS**, robocalls have been combined with a process called "call spoofing" in which a call appears to originate from a local, often legitimate, number to trick the call recipient into answering the call; and

**WHEREAS**, under the federal Truth in Caller ID Act, individuals are prohibited from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongly obtain anything of value; and

**WHEREAS**, as technology continues to evolve the number of robocalls and "call spoofing" continues to grow and although the Federal Communications Commission has initiated new policy initiatives to combat illegal robocalls and "call spoofing", more needs to be done;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges Congress and the President of the United States to protect American consumers by advancing a coordinated effort among the Federal Trade Commission, the Federal Communications Commission,

and the Federal Bureau of Investigation to effectively address, promote, and provide an effective and innovative solution to combat illegal, unsolicited, and unwanted robocalls and "call spoofing"; and

**BE IT FURTHER RESOLVED**, that the Sixty-sixth Legislative Assembly urges Congress to grant additional authority to the Federal Communications Commission to allow the agency to stop unwanted robocalls and "call spoofing"; and

**BE IT FURTHER RESOLVED**, that the Federal Communications Commission is urged to educate the public on how to report illegal telephone calls; 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 United States House of Representatives, each member of the Federal Trade Commission, the Chairman of the Federal Communications Commission, the Director of the Federal Bureau of Investigation, and each member of the North Dakota Congressional Delegation.

Filed April 5, 2019

## CHAPTER 541

### HOUSE CONCURRENT RESOLUTION NO. 3009

(Representatives Roers Jones, M. Johnson, O'Brien, Pyle, Schreiber-Beck)  
(Senators J. Lee, Oban, J. Roers, Unruh)

A concurrent resolution recognizing the 100<sup>th</sup> anniversary of the ratification of the 19<sup>th</sup> Amendment to the United States Constitution, which provided women the right to vote, and urging Congress to continue working to provide equal rights to women.

**WHEREAS**, the women's rights movement began in Seneca Falls, New York, in 1848 when the first-ever Women's Rights Convention was organized by Lucretia Mott and Elizabeth Cady Stanton; and

**WHEREAS**, the convention started a 72-year national battle to achieve "Votes for Women", which played out in every state capitol as well as Congress until the ratification of the 19<sup>th</sup> Amendment; and

**WHEREAS**, 2017 marks 100 years since New York State signed women's suffrage into law, three years before the United States adopted the 19<sup>th</sup> Amendment; and

**WHEREAS**, President Woodrow Wilson called a special session of Congress and on May 21, 1919, the House of Representatives passed a bill calling for a constitutional amendment with the Senate following suit on June 4, 1919; and

**WHEREAS**, North Dakota ratified the amendment on December 1, 1919, and on August 18, 1920, ratification was completed with approval by the Tennessee General Assembly; and

**WHEREAS**, the 1920 election became the first United States presidential election in which women were permitted to vote in every state;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly recognizes the 100<sup>th</sup> anniversary of the ratification of the 19<sup>th</sup> Amendment to the United States Constitution and urges the Congress of the United States to continue to provide equal rights for women; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation.

Filed March 19, 2019



## CHAPTER 542

### HOUSE CONCURRENT RESOLUTION NO. 3011

(Representatives Schreiber-Beck, D. Johnson, Longmuir, Marschall, Pyle, Zubke)  
(Senators Fors, Kreun, Oban, Vedaa)

A concurrent resolution directing the Legislative Management to consider studying those provisions of the North Dakota Century Code which relate to the provision of elementary and secondary education.

**WHEREAS**, the state's statutory framework for the provision of elementary and secondary education is codified as North Dakota Century Code Title 15.1; and

**WHEREAS**, since the last elementary and secondary education statutory revision, which was completed in 2001, there have been many changes to the laws relating to the provision of elementary and secondary education; and

**WHEREAS**, a comprehensive review and revision of the elementary and secondary education statutory framework is essential for setting clear objectives and directives for education in the state;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying those provisions of the North Dakota Century Code which relate to the provision of elementary and secondary education; and

**BE IT FURTHER RESOLVED**, that the purpose of the study is to recommend changes to any laws found to be irrelevant, duplicative, inconsistent, or unclear; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed March 28, 2019

## CHAPTER 543

### HOUSE CONCURRENT RESOLUTION NO. 3014

(Representatives Beadle, Blum, Dockter, Howe, Lefor, Mock, Pyle, Roers Jones, M. Ruby)

A concurrent resolution congratulating Carson Wentz for his outstanding season, culminating with a 2018 National Football League Super Bowl Championship for the Philadelphia Eagles.

**WHEREAS**, prior to attending North Dakota State University, Carson Wentz attended Century High School in Bismarck where he played quarterback and defensive back for the football team, excelled in basketball and baseball, and in his effort to achieve a childhood fantasy, focused as much on academics as he did athletics, and hustled to the top of his class to graduate as a class valedictorian in 2011; and

**WHEREAS**, never one to shy away from a challenge, Carson Wentz became the starting quarterback at North Dakota State University in 2014, leading the Bison football team to its fourth and fifth consecutive NCAA Division I Football Championship Subdivision championship titles; and

**WHEREAS**, Carson Wentz was named the College Sports Information Directors of America Division I All-American of the year during the 2015 and 2016 seasons, graduated from North Dakota State University with a 4.0 grade point average, and earned the attention of sports professionals from 06010 to 19147; and

**WHEREAS**, early in the first round of the 2016 National Football League (NFL) draft, the Philadelphia Eagles selected North Dakota State University graduate Carson Wentz, who has the poise and zip recruiters seek, as the second overall pick, the highest selection for a North Dakotan in the history of the NFL; and

**WHEREAS**, starting as quarterback for each of the Philadelphia Eagles' 16 games during his rookie season, Carson Wentz finished with a record-breaking 379 completions by a rookie and was thrice named Rookie of the Week; followed by the 2017 season during which Carson Wentz dominated the Field with 3,296 passing yards, 33 touchdowns, 7 interceptions, a 60.2 completion percentage, and a 101.9 quarterback rating; and

**WHEREAS**, despite missing the final three games of the 2017-18 NFL season, Carson Wentz, the Talented, Mature, and Respected captain of the Philadelphia Eagles, was named the FedEx Air Player of the Year, named to the 2018 Pro Bowl team, and won the 2017 Bert Bell Award for Pro Player of the Year; and

**WHEREAS**, Carson Wentz continues to ring the Bell of charity and community service through the AO1 foundation, whose mission is to "demonstrate the love of God by providing opportunities and support for the less fortunate and those in need";

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly takes great pride in extending to Carson Wentz its heartiest congratulations for winning the 2018 NFL Super Bowl Championship and wishes Carson Wentz the best of luck as he continues to represent his home state in the National Football League with his North Dakota Tough attitude, in pursuit of Super Bowl Championships; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward enrolled copies of this resolution to Carson Wentz, the principal of Century High School in Bismarck, the president of North Dakota State University, the commissioner of the National Football League, and the owners of the Philadelphia Eagles.

Filed March 19, 2019

## CHAPTER 544

### HOUSE CONCURRENT RESOLUTION NO. 3015

(Representatives Satrom, Schauer, Vetter)

A concurrent resolution directing the Legislative Management to consider studying best practices to reduce offender recidivism, increase educational opportunities, prepare incarcerated offenders to rejoin their communities, establish and implement a community transitional housing program, including independent host homes, and encourage communities to reintegrate previously incarcerated individuals into society.

**WHEREAS**, the state releases approximately 1,400 inmates annually; and

**WHEREAS**, previously incarcerated individuals often face numerous barriers upon reintegration into society, including lack of adequate housing, transportation, support systems, training, and employment opportunities; and

**WHEREAS**, previously incarcerated individuals may benefit from resources and assistance upon reintegration into society, including vocational training, substance abuse treatment, short-term housing, and remedial education; and

**WHEREAS**, the state has over 14,000 job openings; and

**WHEREAS**, the employment gap in our communities may be positively impacted through the successful re-entry of previously incarcerated individuals into the workforce; and

**WHEREAS**, our communities should be encouraged to assist and support previously incarcerated individuals reintegrating into society in an effort to reduce recidivism and encourage lawful employment;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying best practices to reduce offender recidivism, increase educational opportunities, prepare incarcerated offenders to rejoin their communities, establish and implement a community transitional housing program, including independent host homes, and encourage communities to reintegrate previously incarcerated individuals into society; and

**BE IT FURTHER RESOLVED**, that in conducting the study, the Legislative Management may seek technical assistance, as appropriate, from the Council of State Governments' Justice Center; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed March 28, 2019

## CHAPTER 545

### HOUSE CONCURRENT RESOLUTION NO. 3018

(Representatives D. Anderson, Schatz, Schmidt, Westlind)  
(Senators Mathern, Robinson, Vedaa)

A concurrent resolution urging the Congress of the United States to provide veterans with medical coverage for hyperbaric oxygenation therapy.

**WHEREAS**, the Centers for Disease Control and Prevention estimates between 1.6 million to 3.8 million concussions occur each year; and

**WHEREAS**, efforts must be made to reduce the risk and health care costs for the country, veterans, and others with brain injuries; and

**WHEREAS**, veterans injured in the line of duty deserve the best treatment our nation can offer; and

**WHEREAS**, veterans suffering with traumatic brain injuries or posttraumatic stress disorder are prescribed symptom-reducing drugs; and

**WHEREAS**, in essence, veterans are warehoused and discharged, dependent on costly antidepressants and other antipsychotic medicines that promote dangerous dependencies and may result in lethal interactions; and

**WHEREAS**, traumatic brain injury is one of the leading causes of morbidity and mortality in the United States, accounting for approximately 2 million emergency room visits, 230,000 to 500,000 hospital admissions, and 52,000 deaths annually in the United States; and

**WHEREAS**, hyperbaric oxygen therapy is a medical treatment that enhances the body's natural healing process by inhalation of 100 percent oxygen in a total body chamber, where atmospheric pressure is increased and controlled, and which is used for a wide variety of treatments as a part of an overall medical care plan; and

**WHEREAS**, hyperbaric oxygen therapy and improving diagnostics have emerged as a promising and effective treatment in healing injured brains and subsequently reducing, and in some cases completely alleviating, the symptoms associated with the traumatic brain injury;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges the Congress of the United States to provide veterans with medical coverage for hyperbaric oxygenation therapy; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of the Congress of the United States.

Filed April 5, 2019

## CHAPTER 546

### HOUSE CONCURRENT RESOLUTION NO. 3019

(Representatives Karls, Martinson, Zubke)  
(Senators Dwyer, Marcellais, Vedaa)

A concurrent resolution expressing gratitude for the outstanding services provided to North Dakota veterans by the Veterans Honor Flight of North Dakota and Minnesota and the North Dakota Native Veterans Honor Flight.

**WHEREAS**, the Veterans Honor Flight of North Dakota and Minnesota and the North Dakota Native Veterans Honor Flight are volunteer organizations providing North Dakota and Minnesota veterans an opportunity to tour Washington D.C. at no cost to the veteran; and

**WHEREAS**, participating veterans are provided tours of the Arlington National Cemetery, Franklin Delano Roosevelt Memorial, World War II Memorial, Lincoln Memorial, Korean Memorial, Vietnam Memorial, and the National Archives; and

**WHEREAS**, participating veterans are provided a vehicle tour of Washington D.C., including viewing the White House, United States Capitol, Supreme Court Building, Library of Congress, Naval Memorial, Air Force Memorial, and Pentagon; and

**WHEREAS**, all funds for the flights and tours are provided by donations from generous individuals and businesses to pay for the flights, meals, hotels, and other expenses of each veteran; and

**WHEREAS**, More than 70 volunteers work to provide this "trip of a lifetime" to North Dakota and Minnesota veterans;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly expresses appreciation for the tireless work provided by volunteers and generous donors for the services provided to North Dakota and Minnesota veterans through the Veterans Honor Flight of North Dakota and Minnesota and the North Dakota Native Veterans Honor Flight; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the chairpersons of the Veterans Honor Flight of North Dakota and Minnesota and the North Dakota Native Veterans Honor Flight.

Filed April 5, 2019

## CHAPTER 547

### HOUSE CONCURRENT RESOLUTION NO. 3022

(Representative Vigesaa)  
(Senator Dever)

A concurrent resolution designating House and Senate employment positions and fixing compensation.

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That for the Sixty-sixth Legislative Assembly, the following positions are designated as employee positions of the House and Senate and are to be paid the daily wages indicated:

#### HOUSE

Chief clerk	\$201
Assistant chief clerk	177
Journal reporter	191
Calendar clerk	177
Bill clerk	165
Recording clerk	160
Sergeant-at-arms	160
Administrative assistant to majority leader	174
Staff assistant to majority leader	174
Administrative assistant to minority leader	174
Staff assistant to minority leader	174
Administrative assistant to Speaker	174
Deputy chief clerk	184
Appropriations committee clerk	174
Assistant appropriations committee clerk	167
Committee clerk for three-day committee	167
Committee clerk for two-day committee	162
Assistant committee clerk	162
Deputy sergeant-at-arms	122
Chief legislative assistant	135
Legislative assistant	115

#### SENATE

Secretary of the senate	\$201
Assistant secretary of the Senate	177
Journal reporter	191
Calendar clerk	177
Bill clerk	165
Recording clerk	160
Sergeant-at-arms	160
Administrative assistant to majority leader	174
Staff assistant to majority leader	174

Administrative assistant to minority leader	174
Staff assistant to minority leader	174
Chief committee clerk	184
Appropriations committee clerk	174
Assistant appropriations committee clerk	167
Committee clerk for three-day committee	167
Committee clerk for two-day committee	162
Assistant committee clerk	162
Deputy sergeant-at-arms	122
Chief page	135
Legislative assistant	115

**BE IT FURTHER RESOLVED**, that each employee of the Sixty-sixth Legislative Assembly is entitled to an additional \$1 per day for each previous regular session of the Legislative Assembly during which that employee was paid for at least 45 days, as either an employee of the House or the Senate, and to receive this additional compensation, which may not exceed \$10 per day, that employee must certify to the Legislative Council the year of each regular session during which that employee was employed as required by this resolution; and

**BE IT FURTHER RESOLVED**, that each majority and each minority leader is entitled to one administrative assistant and two staff assistants, but each majority or minority leader may hire fewer or more assistants so long as the total daily compensation for the assistants hired does not exceed the total daily amount authorized for those positions by this resolution; and

**BE IT FURTHER RESOLVED**, that the report of the Employment Committee of the respective house identify the number of employees in each position by listing every employee and the position for which employed; and

**BE IT FURTHER RESOLVED**, that with the approval of the Employment Committee of the respective house, a position may be converted to a part-time position, with the daily compensation converted to a per hour rate of pay, and a part-time employee may hold more than one part-time position so long as the positions held do not exceed a full-time equivalent position; and

**BE IT FURTHER RESOLVED**, an employee is entitled to pay for any day the Legislative Assembly is in recess and any employee is required to be present for committee hearings or other legislative business; 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 23, 2019



## CHAPTER 548

### HOUSE CONCURRENT RESOLUTION NO. 3023

(Representatives Satrom, Grueneich, Hoverson, Paulson, Schauer, Strinden)

A concurrent resolution honoring the service and devotion our fallen armed forces veterans have made to this great nation.

**WHEREAS**, the brave men and women of the United States armed forces proudly serve this country and risk their lives to protect our freedom; and

**WHEREAS**, thousands of American men and women have selflessly dedicated their lives in service as peacemakers and peacekeepers; and

**WHEREAS**, 5,000 to 6,500 veterans commit suicide annually in the United States and the suicide rate for veterans is more than three times higher than for nonveterans; and

**WHEREAS**, combat trauma, health issues, and emotional issues caused by the combat service of our veterans have led to the premature death of thousands of this nation's veterans; and

**WHEREAS**, greater strides must be made to demonstrate the appreciation and gratitude our loyal military veterans deserve for their service and dedication to this nation;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly honors the service and devotion our fallen armed forces veterans have made to this great nation; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States and to each member of the North Dakota Congressional Delegation.

Filed April 3, 2019

## CHAPTER 549

### HOUSE CONCURRENT RESOLUTION NO. 3024

(Representatives Satrom, Rohr, Schmidt)  
(Senator Schaible)

A concurrent resolution urging Congress to amend federal law, policies, and regulations relating to food safety and labeling to allow for standards and criteria to differentiate food products derived from animal products from those derived from laboratory-produced, cell-cultured meat products.

**WHEREAS**, the establishment of standards to identify and properly label food products to differentiate between animal and laboratory-produced, cell-cultured meat products is necessary to adequately inform the general public of the contents of their food products; and

**WHEREAS**, the enforcement of food product labeling standards reserving the use of the terms "meat," "pork," "beef," and "poultry" to products derived from traditional animal products is necessary to avoid misrepresentation; and

**WHEREAS**, market regulations through the Food Safety Inspection Service of the United States Department of Agriculture are necessary to ensure certainty and consistency among food products offered for retail sale;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges Congress to amend federal law, policies, and regulations relating to food safety and labeling to allow for standards and criteria to differentiate food products derived from animal products from those derived from laboratory-produced, cell-cultured meat products; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the Secretary of the United States Department of Health and Human Services, the Secretary of the United States Department of Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed March 7, 2019

## CHAPTER 550

### HOUSE CONCURRENT RESOLUTION NO. 3025

(Representatives Blum, Grueneich, Headland, Kasper, Lefor, Louser, Nathe, Owens,  
Pollert, D. Ruby)  
(Senators Unruh, Wardner)

A concurrent resolution urging Congress and the President to fund construction of a wall and border control impediments along with the strengthening of border control infrastructure, and urging Congress and the President to ensure compliance with and enforcement of federal immigration laws.

**WHEREAS**, the United States of America takes in more legal immigrants than any nation in the world and the legal immigrants have overwhelmingly proven to be assets to the communities in which they settle, and North Dakotans welcome all races, religions, and creeds to our beloved state who immigrate legally to North Dakota to mix with and to add to our great American melting pot; and

**WHEREAS**, existing federal immigration laws when ardently and equally enforced honor the rich tradition of immigration and the rule of law upon which the American republic was founded; and

**WHEREAS**, it is the duty and responsibility of the federal government to protect national borders and secure the sovereignty of the United States of America as well as to enforce immigration and employment laws for the protection of American citizens; and

**WHEREAS**, national security and law enforcement agencies repeatedly have identified the entire United States border with Mexico as a major national security concern and a 2018 National Border Patrol Council survey of more than 600 agents in two of the Border Patrol's busiest sectors, resulted in 89 percent of line agents affirming a "wall system in strategic locations is necessary to securing the border"; and

**WHEREAS**, the enforcement of existing federal immigration laws, especially those regarding national security, immigration, and employment are necessary for the preservation of the sovereignty of this nation and the well-being of the American people; and

**WHEREAS**, strengthening the nation's southern border control infrastructure also will alleviate the hardship experienced by the federal employees who are furloughed due to the federal government being shutdown;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges the Congress of the United States and the President to fund construction of a wall and border control impediments along with the strengthening of border control infrastructure to ensure compliance with and enforcement of federal immigration laws; 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 United States House of Representatives, and each member of the North Dakota Congressional Delegation.

Filed April 3, 2019

## CHAPTER 551

### HOUSE CONCURRENT RESOLUTION NO. 3026

(Representative Keiser)

A concurrent resolution urging Congress and the Internal Revenue Service to allow states to determine health benefit coverage requirements without jeopardizing health savings account eligibility.

**WHEREAS**, high-deductible health plans have become the fastest growing product in the insurance market and health savings accounts (HSAs) insure tens-of-millions of Americans in the employer market and millions more who shop within each state's individual market; and

**WHEREAS**, HSAs are regulated primarily by the Internal Revenue Service (IRS), with one critical feature of qualification being the prohibition of covering medical expenses that are not preventive in nature without cost-sharing; and

**WHEREAS**, pursuant to federal law, states regulate the business of insurance and thus the quality and quantity of health insurance products available within each state's borders and states decide what benefits must be covered by a policy of insurance within their borders; and

**WHEREAS**, by enacting first-dollar insurance mandates or coverage requirements for benefits other than preventive care, states risk disqualifying otherwise HSA-qualified fully insured plans; and

**WHEREAS**, in states in which a nonpreventive benefit is required to be covered without cost-sharing, HSA owners become ineligible to contribute to their HSAs and must find replacement health insurance;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges the Congress of the United States and the IRS to allow states to determine health benefit coverage requirements without jeopardizing HSA eligibility; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Commissioner of Internal Revenue and to each member of the North Dakota Congressional Delegation.

Filed March 6, 2019

## CHAPTER 552

### HOUSE CONCURRENT RESOLUTION NO. 3027

(Representative Keiser)

A concurrent resolution directing the Legislative Management to consider studying the expansion of the Public Employees Retirement System's uniform group insurance health benefits for long-term state employees who separate from employment due to reduction in force or retirement.

**WHEREAS**, the State of North Dakota relies on and benefits from state employees who make a career of civil service; and

**WHEREAS**, state law recognizes long-serving civil servants by allowing retirement based on a calculation of age and years of service, with approximately 37 percent of our Public Employees Retirement System retirees retiring under this rule; and

**WHEREAS**, budget constraints during the previous 4 years necessitated reduction in force termination of career state employees, with 95 positions eliminated from January 1, 2016, through December 1, 2018; and

**WHEREAS**, our health insurance system heavily relies on employer-sponsored health insurance; and

**WHEREAS**, state employees who separate from employment before reaching Medicare age due to reduction in force or retirement are faced with the challenge of finding affordable health insurance;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying the expansion of the Public Employees Retirement System's uniform group insurance health benefits for long-term state employees who separate from employment due to reduction in force or retirement; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed April 3, 2019

## CHAPTER 553

### HOUSE CONCURRENT RESOLUTION NO. 3029

(Representatives Steiner, B. Anderson, Lefor, Meier, Rohr, D. Ruby)  
(Senators Kannianen, Luick, Myrdal)

A concurrent resolution urging Congress to pass a federal prohibition on abortions performed 20 weeks postfertilization.

**WHEREAS**, a bill prohibiting abortions from being performed 20 weeks postfertilization passed in the United States House of Representatives in 2013, 2015, and 2017; and

**WHEREAS**, in 2017, the bill prohibiting abortions from being performed 20 weeks postfertilization failed to pass in the United States Senate by only nine votes; and

**WHEREAS**, over twenty states, including North Dakota, have implemented laws, with varying exceptions, prohibiting abortions from being performed 20 weeks postfertilization;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges the Congress of the United States to pass a federal prohibition on abortions performed 20 weeks postfertilization; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Speaker of the United States House of Representatives, the President pro tempore of the United States Senate, and each member of the North Dakota Congressional Delegation.

Filed March 19, 2019

## CHAPTER 554

### HOUSE CONCURRENT RESOLUTION NO. 3030

(Representatives Keiser, Boschee, Pollert)  
(Senators Heckaman, Klein, Wardner)

A concurrent resolution to recognize Monday, March 4, 2019, as "North Dakota Workforce Safety and Insurance Day" and to congratulate Workforce Safety and Insurance on its 100<sup>th</sup> anniversary.

**WHEREAS**, on this day in 1919, the then known Workmen's Compensation Bureau was established by the 16<sup>th</sup> North Dakota Legislative Assembly under House Bill No. 56 (1919) with a comprehensive set of workers compensation laws designed to provide a safety net for employees hurt on the job in North Dakota; and

**WHEREAS**, this event signifies Workforce Safety and Insurance as providing sure and certain relief to injured employees and their families for 100 years; and

**WHEREAS**, North Dakota is just one of four states in the country to have this exclusive arrangement with its citizens; and

**WHEREAS**, Workforce Safety and Insurance is funded solely by employer premiums and receives no general fund tax dollars; and

**WHEREAS**, we recognize the many Legislative Assemblies and citizen-led efforts that improved the workers' compensation system in North Dakota and provided support for Workforce Safety and Insurance during its 100-year history; and

**WHEREAS**, Workforce Safety and Insurance is known nationally as a state program with favorable benefits for injured workers, fair reimbursements for medical providers, and the lowest premiums in the country for employers; and

**WHEREAS**, since 2005, due to favorable fund investment results, Workforce Safety and Insurance has returned more than \$1.25 billion to North Dakota employers through premium dividends; and

**WHEREAS**, we honor the memory of many Workforce Safety and Insurance employees, board members, injured employees and their families, employers, and medical providers who have helped shape and expand the benefits, safety services, and programs offered by Workforce Safety and Insurance; and further thank Workforce Safety and Insurance's current employees for their ongoing dedication and contributions to fulfill their mission "to care for injured workers";

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly recognizes March 4, 2019, as "North Dakota Workforce Safety and Insurance Day"; and



**BE IT FURTHER RESOLVED**, that all citizens of North Dakota are urged to take cognizance of this event and to participate fittingly in its observance; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor, members of the Workforce Safety and Insurance Board of Directors, and members of the North Dakota Congressional Delegation.

Filed March 6, 2019

## CHAPTER 555

### HOUSE CONCURRENT RESOLUTION NO. 3031

(Representative Klemin)  
(Senator Wardner)

A concurrent resolution requesting the Legislative Management to study the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.

**WHEREAS**, within the judicial branch, the juvenile court system is responsible for the adjudication and disposition of allegations that a juvenile is deprived, unruly, or has committed a delinquent act; and

**WHEREAS**, in addition to the juvenile court process, other entities are involved in addressing juvenile justice issues, including the Department of Corrections and Rehabilitation through the Division of Juvenile Services, the Department of Human Services, the Commission on Legal Counsel for Indigent Defense, regional human service centers, K-12 public schools, and a wide variety of treatment providers; and

**WHEREAS**, an effective resolution of juvenile justice issues must address recidivism, improve service access, efficiently use system resources, and collaborate with other service systems to identify the spectrum of needs of a juvenile involved in the system; and

**WHEREAS**, the current juvenile justice process has not been reviewed in almost 30 years; and

**WHEREAS**, the current process poses concerns for ensuring the most effective use of probation services, access to adequate support services, the potential for unwarranted institutional placements, and the need to distinguish between deprived juveniles and unruly and delinquent juveniles with respect to dispositions and service access;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process; and

**BE IT FURTHER RESOLVED**, that in conducting the study, the Legislative Management may seek technical assistance, as appropriate, from the Council of State Governments' Justice Center; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed April 1, 2019

## CHAPTER 556

### HOUSE CONCURRENT RESOLUTION NO. 3032

(Representatives Vigesaa, Bellew, Devlin, D. Johnson, Keiser, Monson)  
(Senators Holmberg, Klein, Wardner)

A concurrent resolution urging North Dakota to continue strengthening the sister-state ties between North Dakota and the people of the Republic of China (Taiwan); supporting the signing of a Bilateral Trade Agreement between the United States and Taiwan; and reaffirming support for increasing Taiwan's international profile.

**WHEREAS**, North Dakota and Taiwan entered a sister-state relationship in 1986; and

**WHEREAS**, Taiwan shares the same values of freedom, democracy, rule of law, and respect for human rights as North Dakota; and

**WHEREAS**, North Dakota and Taiwan look forward to further promoting the relationship for mutual trade, education, and cultural benefits; and

**WHEREAS**, negotiations for a fair and reciprocal Bilateral Trade Agreement between Taiwan and the United States are an important step toward further strengthening bilateral trade, which will increase North Dakota's exports to Taiwan and promote bilateral investments; and

**WHEREAS**, 2019 marks the 40<sup>th</sup> anniversary of the Taiwan Relations Act, a United States public law, which built a strong foundation for the ties between the United States and Taiwan and assures the continuation of commercial, cultural, and other relations between the two; and

**WHEREAS**, Taiwan, as a responsible stakeholder in the international community, is seeking to meaningfully participate in the World Health Organization and International Civil Aviation Organization;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges North Dakota to continue its endorsement and support of the relationship and shared interests between the people of the Republic of China (Taiwan) and North Dakota and celebrate the 33<sup>rd</sup> anniversary of sister-state relations; that the Sixty-sixth Legislative Assembly endorses the signing of a Bilateral Trade Agreement between Taiwan and the United States; and that the Sixty-sixth Legislative Assembly supports Taiwan's meaningful participation in international organizations that support the health, safety, and well-being of the people of Taiwan; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the United States Secretary of State, Secretary General of the International Civil Aviation Organization, United States Secretary of Transportation,

Governor of the Taiwan Provincial Government, and Director General of the Taipei Economic and Cultural Office in Denver, Colorado.

Filed March 6, 2019

## CHAPTER 557

### HOUSE CONCURRENT RESOLUTION NO. 3033

(Representative Devlin)

A concurrent resolution requiring the flag of the United States of America to be flown in Memorial Hall at all times in honor of veterans and members of the armed forces.

**WHEREAS**, North Dakota Century Code Section 54-35-02 provides the placement of any permanent display in the Legislative Hall or the Memorial Hall is subject to approval of the Legislative Management, and under Legislative Management policy any nonpermanent display is permitted for no more than 30 days; and

**WHEREAS**, an American flag has not been displayed in the Memorial Hall at all times in the past; and

**WHEREAS**, the flag of the United States of America serves as a beacon of hope and liberty to the world; a symbol of our unity, freedom, and patriotism; and a reminder of the honor due to veterans and members of the armed forces; North Dakotans hold veterans and members of the armed forces in high esteem and express gratitude for the service they have rendered to our country; and

**WHEREAS**, in the words of President Ronald Reagan, "[w]e remember those who were called upon to give all a person can give, and we remember those who were prepared to make that sacrifice if it were demanded of them in the line of duty, though it never was. Most of all, we remember the devotion and gallantry with which all of them ennobled their nation as they became champions of a noble cause";

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the flag of the United States of America must be flown, in accordance with the United States flag code, at all times in Memorial Hall.

Filed April 3, 2019

## CHAPTER 558

### HOUSE CONCURRENT RESOLUTION NO. 3035

(Representatives Richter, Hatlestad, Keiser, Klemin)

A concurrent resolution congratulating Cara Mund for being crowned Miss America 2018.

**WHEREAS**, the young woman selected annually as Miss North Dakota epitomizes the finest traditions of North Dakota through her talent, scholarship, service to others, and style; and

**WHEREAS**, in June of 2017, Cara Mund, a native of Bismarck and a graduate of Bismarck Century High School, was crowned Miss North Dakota 2018, representing the pride and joy of the Peace Garden State; and

**WHEREAS**, North Dakota joins in celebrating Cara Mund's outstanding achievement of being crowned Miss America 2018 in Atlantic City, New Jersey, on September 10, 2017; and

**WHEREAS**, Cara Mund was the first contestant from North Dakota to be awarded the title of Miss America; and

**WHEREAS**, Cara Mund is the only Miss America to be invited as a guest at the State of the Union address in Washington, D.C. in 2018; and

**WHEREAS**, in her role as Miss America, Cara Mund served as the National Goodwill Ambassador for Children's Miracle Network Hospitals and promoted her personal platform, the Make-A-Wish Foundation; and

**WHEREAS**, Cara Mund has brought honor and pride to North Dakota and the Miss North Dakota Scholarship Organization, Inc.; and

**WHEREAS**, Cara Mund is a trailblazer and embodies the legendary spirit of North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly takes great pride in extending to Cara Mund its heartiest congratulations and encourages all citizens of North Dakota to join in celebrating her outstanding achievements; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward this resolution to Cara Mund.

Filed April 5, 2019

## CHAPTER 559

### HOUSE CONCURRENT RESOLUTION NO. 3041

(Representatives Buffalo, P. Anderson, Dobervich, Hager, Hanson, Holman, M. Nelson)  
(Senators Dotzenrod, Kannianen, Oban, Schaible)

A concurrent resolution urging Congress to pass Savanna's Act.

**WHEREAS**, homicide is the third leading cause of death among American Indian and Alaska Native women between 10 and 24 years of age and the fifth leading cause of death for American Indian and Alaska Native women between 25 and 34 years of age; and

**WHEREAS**, in some tribal communities, American Indian women are murdered at more than 10 times the national average; and

**WHEREAS**, Native American and Alaska Native women are at least two times more likely to experience rape or sexual assault and two and one-half times more likely to experience violent crimes compared to all other races, and those factors often are tied to cases involving a disappearance or murder; and

**WHEREAS**, the National Crime Information Center reported 5,712 cases of missing American Indian and Alaska Native women and girls in 2016, yet the United States Department of Justice's federal missing persons database only logged 116 cases; and

**WHEREAS**, in 2016, North Dakota had 125 cases of Native American women and girls reported missing to the National Crime Information Center, with many cases likely going unreported; and

**WHEREAS**, Savanna LaFontaine-Greywind, for whom the federal legislation is named, was a member of the Spirit Lake Tribe and vanished when she was eight months pregnant; and

**WHEREAS**, Savanna's Act will improve tribal access to federal crime information databases on missing persons and cooperation among tribal, federal, state, and local law enforcement, and will mandate the Attorney General consult with tribes and submit a report to Congress on how to resolve the barriers tribes face;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges the Congress of the United States to pass Savanna's Act; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Speaker of the United States House of Representatives, the President Pro Tempore of the United States Senate, and each member of the North Dakota Congressional Delegation.

Filed April 1, 2019

## CHAPTER 560

### HOUSE CONCURRENT RESOLUTION NO. 3042

(Representatives Beadle, Blum, Mock, O'Brien, Owens, Sanford)  
(Senators Bakke, Holmberg, Kreun, Meyer)

A concurrent resolution thanking the Engelstad family for their generosity on behalf of all North Dakotans.

**WHEREAS**, the late Ralph Engelstad made a historic and generous gift of the finest facility of its kind in the world; and

**WHEREAS**, the 400,000 square foot facility, which has hosted numerous concerts and live events, including the 2005 IIHF World Junior Hockey Championship, has brought national and international attention to the region; and

**WHEREAS**, in 2012, Sports Illustrated said, "The Ralph is the Taj Mahal of Hockey Venues"; and

**WHEREAS**, the Ralph Engelstad Arena is owned by the Engelstad Family Foundation; and

**WHEREAS**, the Ralph Engelstad Arena has contributed over \$1 million a year for the operation of the arena and to the University of North Dakota for athletic scholarships; and

**WHEREAS**, Ralph's daughter, Kris Engelstad McGarry, on behalf of the Engelstad Foundation, has provided another generous gift for a state-of-the-art video display; and

**WHEREAS**, the Ralph Engelstad Arena and its related facility, the Betty Engelstad Sioux Center, benefit all North Dakotans;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly extends a "thank you" and a deep appreciation from all North Dakota citizens to Kris Engelstad McGarry and her mother, Betty Engelstad; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies to Betty Engelstad, Kris Engelstad McGarry, and the Engelstad Foundation.

Filed March 21, 2019



## CHAPTER 561

### HOUSE CONCURRENT RESOLUTION NO. 3043

(Representatives Porter, Boe, J. Nelson, Pollert, Toman)

(Senators Cook, Wardner)

(Approved by the Delayed Bills Committee)

A concurrent resolution declaring February 14, 2019, as Giving Hearts Day in North Dakota.

**WHEREAS**, Giving Hearts Day was started in 2008 by Dakota Medical Foundation and Impact Foundation as the first one-day giving event of its kind in the region; and

**WHEREAS**, the Alex Stern Family Foundation joined Dakota Medical Foundation and Impact Foundation as a cohost in 2014; and

**WHEREAS**, this 24-hour fundraising event in North Dakota and northwest Minnesota is dedicated to inspiring donations for charities at [givingheartstoday.org](http://givingheartstoday.org); and

**WHEREAS**, Dakota Medical Foundation, Impact Foundation, and Alex Stern Family Foundation jointly support [givingheartstoday.org](http://givingheartstoday.org) to create a powerful, user-friendly website for donors to find and connect with regional charities and for nonprofits to receive donations and recruit volunteers; and

**WHEREAS**, last year, \$13.2 million was raised from more than 28,000 donors, directly benefiting 400 charitable causes, and since its start, nearly \$55 million has been raised; and

**WHEREAS**, Giving Hearts Day 2019 includes more than 450 charitable causes and spans the entire state of North Dakota and northwest Minnesota; and

**WHEREAS**, more than \$4 million has been committed by the cohosts, businesses, and other generous community members to be used for matches, awards, incentives, and scholarships benefiting participating Giving Hearts Day charities; and

**WHEREAS**, North Dakota citizens are encouraged to experience the joy of giving and ignite others to help great causes positively impact our communities;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly declares February 14, 2019, as Giving Hearts Day in North Dakota; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to Dakota Medical Foundation.

Filed February 14, 2019

## CHAPTER 562

### HOUSE CONCURRENT RESOLUTION NO. 3044

(Representatives Boschee, Guggisberg, Hoverson, M. Johnson, Kasper, Schneider)  
(Senators Hogan, Kannianen, Oban, Wanzek)

A concurrent resolution directing the Legislative Management to consider studying, in consultation with the Department of Commerce, Department of Human Services, and the private sector, the desirability and feasibility of developing and expanding asset-building opportunities, including a review of state and federal policies associated with government assistance which impede or improve low-income workers' ability to earn more income.

**WHEREAS**, North Dakota ranks high in job creation, has one of the lowest unemployment rates in the nation, and is showing a rebounding economic growth rate; and

**WHEREAS**, in 2017, the average adjusted gross income for individuals in North Dakota was nearly \$69,500, declining from a peak in 2013, but 10.3 percent of individuals and 11 percent of families live below the poverty level; and

**WHEREAS**, in 2017, 9 percent of households in North Dakota were food insecure at some time, with 3.5 percent of those households having very low food security; and

**WHEREAS**, North Dakota's population has grown to an all-time high of 760,077 residents, and although the average age has declined, the population of individuals over the age of 65 is estimated to grow to 18 percent of the population by 2025; and

**WHEREAS**, 10.5 percent of North Dakotans have a disability that may impact their level of employment, and Social Security comprises the sole source or majority of income for 61 percent of individuals over the age of 65 in North Dakota; and

**WHEREAS**, in 2017, 6.3 percent of the population used high-cost, high-risk forms of credit, including payday loans, rent-to-own, and pawning to make ends meet;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying, in consultation with the Department of Commerce, Department of Human Services, and the private sector, the desirability and feasibility of developing and expanding asset-building opportunities, including a review of state and federal policies associated with government assistance which impede or improve low-income workers' ability to earn more income; and

**BE IT FURTHER RESOLVED**, that the Legislative Management and the Department of Human Services project the number of individuals who may be living with low incomes for the next 10 years and determine a self-sufficiency standard for North Dakota; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed March 15, 2019

## CHAPTER 563

### HOUSE CONCURRENT RESOLUTION NO. 3047

(Representatives B. Koppelman, Eidson, Johnston, Kasper, Laning, Louser,  
Marschall, Rohr)  
(Senators Davison, Dever)

A concurrent resolution directing the Legislative Management to consider studying state and federal veterans' programs, the programs' eligibility requirements, and the efficiency of public or private entities responsible for the administration of state and federal veterans' programs to ensure all current and future North Dakota veterans receive the care, assistance, and benefits to which the veterans are entitled.

**WHEREAS**, the Administrative Committee on Veterans' Affairs was established on July 1, 1971, and is responsible for the organization, policy, and general administration of all veterans' affairs in North Dakota; and

**WHEREAS**, the mission of the Department of Veterans' Affairs is to assist veterans of North Dakota and their dependents in obtaining all state and federal benefits to which they are entitled; and

**WHEREAS**, the federal and state benefits available to eligible veterans and their dependents include health care benefits, employment benefits and assistance, educational benefits and tuition assistance, and housing assistance; and

**WHEREAS**, a comprehensive review of all state and federal veterans' programs and the programs' eligibility requirements, and an assessment of the efficiency of public or private entities responsible for the administration of state and federal veterans' programs is necessary to ensure all current and future North Dakota veterans receive the care, assistance, and benefits to which the veterans are entitled;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying state and federal veterans' programs, the programs' eligibility requirements, and the efficiency of public or private entities responsible for the administration of state and federal veterans' programs to ensure all current and future North Dakota veterans receive the care, assistance, and benefits to which the veterans are entitled; and

**BE IT FURTHER RESOLVED**, that the study must include consultation with the Administrative Committee on Veterans' Affairs, the Department of Veterans' Affairs, the Adjutant General, and any veterans organization seeking to provide input; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed April 5, 2019

## CHAPTER 564

### HOUSE CONCURRENT RESOLUTION NO. 3048

(Representatives Magrum, Fegley, Johnston, Karls, Satrom, Simons)

A concurrent resolution directing the Legislative Management to consider studying the feasibility and desirability of establishing a wind reclamation fund and whether the statutorily required minimum wind turbine setback distances provide adequate protections to nonparticipating landowners and their property.

**WHEREAS**, wind power is the fastest-growing source of electricity in the world and North Dakota is a leading state within wind power generation, with 21.5 percent of all in-state generated electricity in 2016 powered by wind; and

**WHEREAS**, wind energy can be a very environmentally, economically, and socially sustainable source of energy when careful decommissioning planning is undertaken to ensure the costs and benefits are shared equitably and there are no lasting impacts on the physical and cultural landscape; and

**WHEREAS**, the type of land used for wind energy generation often is agriculture, grazing, recreation, open space, scenic areas, wildlife habitat, and forest management and is typically suitable to areas of grazing or agricultural uses; and

**WHEREAS**, the agricultural and grazing land uses are disturbed by the construction of a wind turbine, and some intensive agriculture may be adversely impacted during operation; and

**WHEREAS**, without additional financial assurance requirements, property owners would be burdened with the financial responsibility of restoring land to the original condition after the decommissioning of a wind turbine; and

**WHEREAS**, establishing a wind reclamation fund would assist property owners with the excess costs associated with removal of a wind turbine, foundation and road removal, site remediation, abandonment, and repairing damage caused during decommissioning; and

**WHEREAS**, minimum wind turbine setback distance requirements are codified safety measures enacted to protect the land, property, and health of nonparticipating landowners; and

**WHEREAS**, noise, shadow flickering, ice fall, and turbine failure, produce risks to a nonparticipating landowner's land, property, and health which can be reasonably mitigated, minimized, or eliminated by requiring effective and feasible setback distances;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management shall consider studying the feasibility and desirability of establishing a wind reclamation fund and whether the statutorily

required minimum wind turbine setback distances provide adequate protections to nonparticipating landowners and their property; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed April 9, 2019

## CHAPTER 565

### HOUSE CONCURRENT RESOLUTION NO. 3051

(Representatives Vetter, Beadle, C. Johnson, Lefor, Louser, O'Brien)  
(Senators Burckhard, Meyer)

A concurrent resolution directing the Legislative Management to consider studying the feasibility, desirability, and benefits of expanding the goods and services produced by Roughrider Industries into additional noncompetitive markets to provide inmates with the training and skills to successfully reintegrate inmates into society.

**WHEREAS**, Roughrider Industries is a division of the Department of Corrections and Rehabilitation whose mission is to employ inmates to produce quality goods and services in a self-sustaining manner that makes the time of incarceration productive, while preparing the inmates to reintegrate into society; and

**WHEREAS**, with over 97 percent of inmates returning to the streets, equipping inmates with the tools and job skills necessary to be productive and successful upon release reduces the cost of transition and retraining on society; and

**WHEREAS**, Roughrider Industries does not use tax dollars to support correctional programs, and all salaries, equipment, capital improvements, and operating expenses are paid from revenues generated from the sale of the products and services; and

**WHEREAS**, Roughrider Industries may sell directly to nonprofit organizations, political subdivisions, and governmental agencies, including federal, state, and tribal agencies, but may not sell directly to the general public; and

**WHEREAS**, a comprehensive review and assessment of whether the quality goods and services produced by Roughrider Industries should be expanded to cover additional noncompetitive goods and services, including clothing or computer hardware, is necessary to determine whether a mechanism allowing wholesaling of these additional noncompetitive goods and services directly to the general public would aid inmates in their successful rehabilitation and reintegration into society upon their release;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying the feasibility, desirability, and benefits of expanding the goods and services produced by Roughrider Industries into additional noncompetitive markets to provide inmates with the training and skills to successfully reintegrate the inmates into society; and

**BE IT FURTHER RESOLVED**, that the study must include consultation with the Department of Corrections and Rehabilitation and any private North Dakota business seeking to provide input; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed March 28, 2019



## CHAPTER 566

### HOUSE CONCURRENT RESOLUTION NO. 3052

(Representatives Mock, D. Ruby)  
(Senators Bakke, Rust)

A concurrent resolution requesting the Legislative Management to study North Dakota Century Code Title 39, including traffic fines and penalties imposed by state and local governments, implementation of methods and mechanisms to improve traffic safety, decrease motor vehicle crashes, fatalities, and injuries, and discourage impaired driving, speeding, distracted driving, and lack of seatbelt use in North Dakota.

**WHEREAS**, there are more than 15,000 vehicle crashes in North Dakota each year resulting in fatalities, injuries, and property damage; and

**WHEREAS**, in 2016, 113 people died on North Dakota roads; and

**WHEREAS**, in 2016, males aged 18 to 34 accounted for 36 percent of all unbelted crash fatalities, 44 percent of drivers in speed-related fatal crashes, and 44 percent of impaired drivers involved in fatal crashes; and

**WHEREAS**, the vast majority of motor vehicle fatalities in North Dakota are the result of driver behavior including impaired driving, speed, distracted driving, and lack of seatbelt use; and

**WHEREAS**, according to the National Highway Traffic Safety Administration, 3,477 people nationwide were killed and an estimated 391,000 were injured in motor vehicle crashes involving distracted drivers in 2015; and

**WHEREAS**, speed or driving too fast for conditions is a factor in about one-third of fatal crashes in North Dakota each year; and

**WHEREAS**, there may be several chapters within North Dakota Century Code Title 39 in need of updating or further review due to inconsistencies or statutory conflicts, including definitions of emergency vehicles, terminology related to Highway Patrol, title registration, and equipment and lighting requirements;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That during the 2019-20 interim, the Legislative Management shall consider studying the traffic fines and penalties imposed by state and local governments and conduct a complete analysis of North Dakota Century Code Title 39. The study must include a comprehensive assessment addressing any inconsistencies, conflicting chapters or sections, or lack of clarity within North Dakota Century Code Title 39 and a review of North Dakota's traffic fines, fees, and penalty statutes and compare them with the fines, fees, and penalties of other states; and include an analytical evaluation of methods to improve traffic safety, decrease motor vehicle crashes, fatalities, and

injuries, and discourage impaired driving, speeding, distracted driving, and lack of seatbelt use in North Dakota; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendation, to the Sixty-seventh Legislative Assembly.

Filed April 1, 2019

## CHAPTER 567

### HOUSE CONCURRENT RESOLUTION NO. 3054

(Representatives Dobervich, Weisz)  
(Senators Dever, Hogan)

A concurrent resolution directing the Legislative Management to consider studying the necessary steps and resources, including funding, to eliminate human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) in North Dakota.

**WHEREAS**, the President of the United States announced a plan in coordination with the United States Department of Health and Human Services to eliminate the transmission of HIV by 2030; and

**WHEREAS**, the United States Department of Health and Human Services initiative will aim to reduce new HIV infections by 75 percent within the next 5 years and 90 percent within the next 10 years; and

**WHEREAS**, individuals living with HIV infection who receive proper treatment and care can live healthy, productive lives; and

**WHEREAS**, individuals living with HIV infection who achieve and maintain viral suppression effectively have no risk of sexual transmission to others; and

**WHEREAS**, individuals at high risk for HIV infection can reduce their risk of acquiring HIV significantly by taking medications known as pre-exposure prophylaxis; and

**WHEREAS**, community-based testing and treatment, as well as state resources, are vital to achieve eradication of HIV transmission; and

**WHEREAS**, North Dakota may require additional resources to achieve the goal of ending the HIV and AIDS epidemic in North Dakota; and

**WHEREAS**, the number of new HIV infections has nearly tripled in North Dakota in the past 10 years; and

**WHEREAS**, expanding access to education, testing, prevention services, and quality care and treatment will reduce HIV transmission in North Dakota; and

**WHEREAS**, data obtained from a study will identify areas in greatest need of resources for prevention and treatment; and

**WHEREAS**, a study will determine the funding required by the state to meet the policy goals outlined by the federal government;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying the necessary steps and resources, including funding, to eliminate HIV and AIDS in North Dakota; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed April 1, 2019

## CHAPTER 568

### HOUSE CONCURRENT RESOLUTION NO. 3056

(Representatives Buffalo, Boschee, J. Nelson, Satrom, Strinden)  
(Senators Heckaman, Hogan, Kannianen, Marcellais, Mathern, Oban)

A concurrent resolution directing the Legislative Management to consider studying the issues and data reporting challenges related to missing and murdered indigenous people and human trafficking cases.

**WHEREAS**, there are approximately 39,000 indigenous people living in the state; and

**WHEREAS**, indigenous people are victimized by human trafficking at rates higher than that of the general population; and

**WHEREAS**, indigenous people are more than twice as likely to experience violent crimes and at least twice as likely to experience rape and sexual assault crimes compared to other races; and

**WHEREAS**, at least four out of five indigenous people have experienced violence in their lifetime; and

**WHEREAS**, on some reservations, indigenous women are murdered at more than 10 times the national average; and

**WHEREAS**, homicide is the third leading cause of death among indigenous women between 10 and 24 years of age; and

**WHEREAS**, cases involving the disappearances of indigenous people often are difficult to track, investigate, and prosecute in part due to jurisdictional challenges, lack of resources, and lack of communication and coordination among federal, state, and tribal officials;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying the issues and data reporting challenges related to missing and murdered indigenous people and human trafficking cases; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed April 1, 2019

## CHAPTER 569

### HOUSE CONCURRENT RESOLUTION NO. 3057

(Representatives Mock, D. Anderson, C. Johnson, Vetter)

(Senators Meyer, Vedaa)

(Approved by the Delayed Bills Committee)

A concurrent resolution to recognize and congratulate the North Dakota Mill and Elevator Association on its 100<sup>th</sup> anniversary.

**WHEREAS**, the North Dakota Industrial Commission was established with the passage of House Bill No. 17 on February 25, 1919, comprised of the Governor, Attorney General, and Commissioner of Agriculture and Labor, and was designated as the manager of certain utilities, industries, enterprises and business projects on behalf of North Dakota; and

**WHEREAS**, the North Dakota Mill and Elevator Association was established with the passage of Senate Bill No. 20 on February 25, 1919, as a result of a long battle waged by farmers and progressives in an attempt to break the grain trade monopoly, have some control over pricing and grading of grain and for the purpose of encouraging and promoting agriculture, commerce, and industry; and

**WHEREAS**, the North Dakota Industrial Commission began the experiment of a state-owned mill in 1919 with the purchase of a small flour mill in Drake, North Dakota, with a daily capacity of 125 barrels per day; and

**WHEREAS**, on October 21, 1919, A. C. Townsley, founder and president of the Nonpartisan League, announced the State Mill and Elevator would be built in Grand Forks on land donated by the city; and

**WHEREAS**, at 11:00 a.m. on October 30, 1922, the first electronic mills of the State Mill and Elevator were turned on by Governor R. A. Nestos at the grand opening ceremony in front of 2,500 guests; and

**WHEREAS**, on July 28, 1970, a severe fire engulfed the top floors of the State Mill and Elevator, resulting in an 18-month suspension of operations while the building was salvaged and repaired; and

**WHEREAS**, on January 31, 1972, Governor William Guy presided over a rededication of the State Mill and Elevator which allowed operations to resume; and

**WHEREAS**, the State Mill and Elevator began with a daily production of 3,000 barrels per day in 1922 and grew into the largest flour mill in the United States, the 7<sup>th</sup> largest wheat milling company in the United States, and the only state-owned mill and elevator in the United States; and

**WHEREAS**, the State Mill and Elevator grinds 33 million bushels of top quality spring wheat and durum per year and has the capacity to store 5 million bushels of grain; and

**WHEREAS**, the State Mill and Elevator ships "Dakota Maid" products nationwide and exports flour to customers throughout the Caribbean Islands and the Pacific Rim, and emphasizes plant and food safety, product quality, and customer service; and

**WHEREAS**, the employees organized a local union under the American Federation of Grain Millers in the late 1940s, which merged and became the Bakery, Confectionery, Tobacco Workers and Grain Millers Local 167G in 1999; and

**WHEREAS**, the State Mill and Elevator remains a national leader in safety and efficiency of operations thanks to regular training and a commitment to quality of service by workers and management alike; and

**WHEREAS**, in fiscal year 2018, the State Mill and Elevator reported a direct economic impact to the region of \$255 million and a secondary economic impact of \$592 million; and

**WHEREAS**, for more than 80 years the State Mill and Elevator has turned regular profits and contributed surplus funds to the general fund to benefit the lives of all North Dakotans; and

**WHEREAS**, the State Mill and Elevator is a North Dakota fixture that makes a strong contribution to the economy of our state; and

**WHEREAS**, we honor the North Dakota Mill and Elevator Association for its 100 years of service and thank the State Mill and Elevator's current and past hardworking employees for their ongoing dedication to achieving continuous improvement and their commitment to fulfilling the State Mill and Elevator's mission;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly recognizes and congratulates the North Dakota Mill and Elevator Association on its 100<sup>th</sup> anniversary; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to members of the North Dakota Industrial Commission, manager of the State Mill, President of the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, and members of the North Dakota Congressional Delegation.

Filed March 15, 2019

## CHAPTER 570

### HOUSE CONCURRENT RESOLUTION NO. 3058

(Representatives M. Ruby, Bellew, Fisher, Hoverson, Louser, Paulson, D. Ruby,  
Schobinger)

(Senators Burckhard, Hogue, Krebsbach, O. Larsen)

(Approved by the Delayed Bills Committee)

A concurrent resolution to commend and congratulate North Dakota's Alpha Company, 164<sup>th</sup> Engineer Combat Battalion, for being awarded the Army Valorous Unit Citation and to recognize and honor the unit and their family members for their heroic and selfless service, sacrifice, dedication, and contributions to North Dakota and the United States of America.

**WHEREAS**, Alpha Company, 164<sup>th</sup> Engineer Combat Battalion, was mobilized and ordered to active duty on August 5, 2005; and after two months of training at Fort Riley in Kansas, the unit moved to the National Training Center at Fort Irwin in California to complete its mobilization validation process, including counter-improvised explosive device training, route clearance, and training and operation in mock Iraqi villages; and

**WHEREAS**, the unit ultimately deployed to Iraq to assume the unit's mission in support of Operation Iraqi Freedom and was the first unit to deploy directly to Operation Iraqi Freedom from the National Training Center; and

**WHEREAS**, the unit's primary mission was to conduct route clearance patrols on the main supply route, patrolling over 86,000 miles; and

**WHEREAS**, between December 1, 2005, to October 31, 2006, the unit engaged in 479 enemy incidents resulting in 446 improvised explosive devices of which 320 were found and cleared and 117 were detonated; and

**WHEREAS**, the unit spent 358 days on foreign soil and 437 days away from families, friends, and communities; and

**WHEREAS**, the unit awarded the Combat Action Badge to over 90 percent of the company, and members of the unit were presented 10 Bronze Star Medals for heroic achievements or services, 10 Purple Heart Medals, and numerous Army Commendation Medals; and

**WHEREAS**, in recognition of the exemplary service, the United States Army awarded the Army Valorous Unit Citation to the unit for extraordinary heroism in action against an armed enemy of the United States; and

**WHEREAS**, the Army Valorous Unit Citation is the second highest unit award of the United States Army and is considered the unit equivalent of a Silver Star Medal; and

**WHEREAS**, on May 23, 2006, Specialist Michael Hermanson made the ultimate sacrifice in service to his country when a rocket propelled grenade was fired in Al Abayachi, Iraq during combat operations; and



**WHEREAS**, the unit became tight knit friends who ultimately became family through shared experiences and service to our nation; and

**WHEREAS**, the unit was welcomed back into North Dakota on November 10, 2006;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly commends and congratulates North Dakota's Alpha Company, 164<sup>th</sup> Engineer Combat Battalion, for being awarded the Army Valorous Unit Citation and recognizes and honors the unit and their family members for their heroic and selfless service, sacrifice, dedication, and contributions to North Dakota and the United States of America; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of Alpha Company, 164<sup>th</sup> Engineer Combat Battalion, or their next of kin and to the Adjutant General.

Filed April 8, 2019

## CHAPTER 571

### HOUSE CONCURRENT RESOLUTION NO. 3059

(Representatives Eidson, Dockter, Grueneich, Kasper, Keiser, Laning, Owens, Pyle,  
M. Ruby)

(Senators Bekkedahl, G. Lee, Marcellais)

(Approved by the Delayed Bills Committee)

A concurrent resolution urging Congress to pass, and President Donald Trump to sign, House Resolution 1911, also known as the SFC Brian Woods Gold Star and Military Survivors Act.

**WHEREAS**, Army Sergeant 1<sup>st</sup> Class William Brian Woods, Jr. (SFC Brian Woods), a decorated special forces medical sergeant, made the ultimate sacrifice for his country and died of wounds sustained while on patrol in Afghanistan in 2009. He was survived by a wife and two young children; and

**WHEREAS**, service members and their families endure hardships and make sacrifices unique to the military in the service of honor, duty, freedom, and patriotism; and

**WHEREAS**, one way we, as a grateful nation, honor those hardships and sacrifices is by promising we will provide financially for spouses and children of service members who die in the line of duty. In the words of Representative Seth Moulton of Delaware, "[w]hen Gold Star spouses are handed a folded flag, it comes with a sacred commitment from the American people. That commitment is for life . . . . That means Gold Star families should have the peace of mind that comes with knowing child care and funeral expenses are taken care of and that they will receive the nation's lifelong financial support"; and

**WHEREAS**, under current law, widows and widowers of service members who die in the line of duty lose their annuities and other survivor benefits upon remarriage; and

**WHEREAS**, the SFC Brian Woods Gold Star and Military Survivors Act would require the United States Department of Defense to pay the costs of transporting the remains of a service member killed in combat to the service member's hometown for a memorial and to a national cemetery of the Gold Star family's choice, and allow remarried Gold Star widows and widowers to continue to receive annuities and child care service assistance and, if they have dependent children, continue to access facilities on military bases; and

**WHEREAS**, it is consistent with North Dakotans' strong support for service members to uphold the nation's promise to care for Gold Star spouses throughout their lifetimes, as provided by the SFC Brian Woods Gold Star and Military Survivors Act;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges the Congress of the United States to pass the SFC Brian Woods Gold Star and Military Survivors Act and urges President Donald Trump to sign the SFC Brian Woods Gold Star Military Survivors Act; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Speaker of the United States House of Representatives, the President Pro Tempore of the United States Senate, each member of the North Dakota Congressional Delegation, and President Donald Trump.

Filed April 17, 2019

# SENATE CONCURRENT RESOLUTIONS

## CHAPTER 572

### SENATE CONCURRENT RESOLUTION NO. 4002

(Senators Mathern, Erbele, Oban)  
(Representatives Buffalo, B. Koppelman, Nathe)

A concurrent resolution urging Congress to address the rising costs and availability of medications and health care for individuals with diabetes and coverage of those costs.

**WHEREAS**, approximately 65,000 adults and children in North Dakota have diabetes; and

**WHEREAS**, the average medical expenses for an individual with diabetes are twice as high as the medical expenses for an individual who does not have diabetes; and

**WHEREAS**, the estimated annual cost of diabetes in North Dakota for 2014 was \$700,000,000; and

**WHEREAS**, individuals with diabetes need regular health care, laboratory tests, and prescription medications and North Dakota is concerned about the increasing costs and availability of medications and health care and coverage for those costs;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges the Congress of the United States to address the rising costs and availability of medications and health care for individuals with diabetes and coverage of those costs; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Speaker of the United States House of Representatives, the President Pro Tempore of the United States Senate, and each member of the North Dakota Congressional Delegation.

Filed March 27, 2019

## CHAPTER 573

### SENATE CONCURRENT RESOLUTION NO. 4003

(Senators Patten, Piepkorn)  
(Representatives Kempenich, Richter)

A concurrent resolution declaring the fourth Saturday in July as "National Day of the Cowboy".

**WHEREAS**, North Dakota pioneering men and women, known as cowboys, helped establish America's frontiers; and

**WHEREAS**, the cowboy archetype transcends gender, generations, ethnicity, geographic boundaries, and political affiliations; and

**WHEREAS**, the cowboy embodies honesty, integrity, courage, compassion, and determination; and

**WHEREAS**, the cowboy spirit exemplifies patriotism and strength of character; and

**WHEREAS**, the cowboy is an excellent steward of the land, its resources, and its creatures; and

**WHEREAS**, the core values expressed within the Cowboy Code of Conduct continue to inspire the pursuit of the highest caliber of personal integrity; and

**WHEREAS**, cowboy and ranching traditions have been part of the American landscape and culture since 1523, and today's cowboys and cowgirls continue to strive to preserve and perpetuate this unique element of America's heritage; and

**WHEREAS**, annual attendance at rodeos exceeds thirty million fans worldwide; and

**WHEREAS**, membership and participation in the national day of the Cowboy Organization, Working Ranch Rodeo Association, American Quarter Horse Association, Pro Rodeo Cowboys Association, the Buffalo Soldiers, Cowboy Fast Draw Association, Pro Bull Riding, Little Britches Rodeo, Western Music Association, Women's Pro Rodeo, and other organizations that encompass the livelihood of the cowboy continues to expand both nationally and internationally; and

**WHEREAS**, the cowboy and his horse are a central figure in literature, art, film, poetry, photography, and music; and

**WHEREAS**, the cowboy is a true American icon occupying a central place in the public's imagination;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly declares the fourth Saturday in July as "National Day of the Cowboy".

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the United States Secretary of Agriculture, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the North Dakota Congressional delegation.

Filed April 3, 2019

## CHAPTER 574

### SENATE CONCURRENT RESOLUTION NO. 4004

(Senators Oban, Davison, Holmberg)  
(Representatives Hanson, Pyle, Schreiber-Beck)

A concurrent resolution directing the Legislative Management to consider studying the impact of students who experience behavioral health crisis or who engage in intense and aggressive behavior for communication purposes, both of which result in behaviors that make learning environments unsafe for other students, teachers, and other school personnel, and the need to implement a uniform reporting system.

**WHEREAS**, all North Dakota students deserve and have the right to attend and participate in educational experiences in a safe school environment; and

**WHEREAS**, all North Dakota teachers, administrators, instructional support staff, student transportation personnel, and facility and food service staff deserve and have the right to teach and work in a safe school workplace environment; and

**WHEREAS**, behavioral health crisis or engagement in intense and aggressive behavior for communication purposes can result in incidences of assault, simple assault, aggravated assault, serious bodily injury, other violent behavior, and altercations such as hitting, kicking, biting, spitting, throwing objects, destruction of classroom furniture or materials, extreme profane vocal outbursts, and threats of violence occur in schools across the state; and

**WHEREAS**, students who experience behavioral health crisis or engagement in intense and aggressive behavior for communication purposes deserve effective and up-to-date screening, assessment, and treatment strategies to address their needs; and

**WHEREAS**, school environments free from classroom and instructional disruptions support meaningful interaction and maximum educational experience and student success; and

**WHEREAS**, accurate and reliable data such as the types of incidences, antecedents, resolutions, frequency, demographic data about the student, circumstances, including if the incident occurred during a regulated or nonregulated event, eligibility for special education, and other pertinent data generally is not available, not accurately reported, and not consistently reported from school to school;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management consider studying the impact of students who experience behavioral health crisis or who engage in intense and aggressive behavior for communication purposes, both of which result in behaviors that make learning environments unsafe for other students, teachers, and other school personnel, and the need to implement a uniform reporting system; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendation, to the Sixty-seventh Legislative Assembly.

Filed April 5, 2019



## CHAPTER 575

### SENATE CONCURRENT RESOLUTION NO. 4006

(Senators Heckaman, Wardner)  
(Representatives Boschee, Pollert)

A concurrent resolution to recognize Monday, February 25, 2019, as "Bank of North Dakota Day" and to congratulate the Bank of North Dakota on its 100<sup>th</sup> anniversary.

**WHEREAS**, on this day in 1919, the Bank of North Dakota was established by the North Dakota Legislative Assembly for the purpose of encouraging and promoting agriculture, commerce, and industry in North Dakota; and

**WHEREAS**, this event signifies Bank of North Dakota as the longest-running successful state-owned bank in the United States; and

**WHEREAS**, the Bank of North Dakota, since 1945 when the Twenty-ninth Legislative Assembly ordered the first transfer of the bank's funds, has returned more than \$1 billion to North Dakota, which includes \$811 million to the North Dakota general fund to augment state revenues and \$227 million to fund infrastructure, housing, disaster programs, technology, and other needs in North Dakota; and

**WHEREAS**, in partnership serving more than 300 headquarter and branch offices of North Dakota's financial institutions, the Bank of North Dakota continues to meet and expand its mission to promote the development of agriculture, commerce, and industry in North Dakota; and

**WHEREAS**, in 1967 the Bank of North Dakota made the first federally insured student loan in the nation and continues to provide a variety of loans for students wanting to pursue postsecondary education; and

**WHEREAS**, we recognize the many North Dakotans who fought to keep the Bank of North Dakota in law and supported it during its 100-year history; and

**WHEREAS**, we honor the memory of many Bank of North Dakota employees who have helped shape and expand the state's economy since the Bank's inception, and thank the Bank of North Dakota's current employees for their ongoing dedication and contributions to fulfill the bank's mission;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly recognizes February 25, 2019, as "Bank of North Dakota Day"; and

**BE IT FURTHER RESOLVED**, that all citizens of North Dakota are urged to take cognizance of this event and to participate fittingly in its observance; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to members of the North Dakota Industrial Commission and members of the North Dakota Congressional Delegation.

Filed February 19, 2019

## CHAPTER 576

### SENATE CONCURRENT RESOLUTION NO. 4007

(Senators J. Lee, Clemens, Dever, Oban)  
(Representatives Meier, Mock)

A concurrent resolution urging Congress and the Food and Drug Administration to end the marketing and advertising of e-cigarettes to youth.

**WHEREAS**, e-cigarettes are known by many different names, including "e-cigs", "e-hookahs", "mods", "vape pens", "vapes", "tank systems", and "electronic nicotine delivery systems"; and

**WHEREAS**, the Centers for Disease Control and Prevention (CDC) reports e-cigarettes are the most commonly used tobacco products among youth, with 2018 CDC data showing 3.6 million middle and high school students used e-cigarettes in the past 30 days; and

**WHEREAS**, e-cigarettes are available in more than 7,000 fruit and candy flavors and advertising and marketing use cartoons and celebrities, which are appealing to youth; and

**WHEREAS**, e-cigarettes contain nicotine, which is a highly addictive drug and has immediate biochemical effects on the brain and body; and

**WHEREAS**, the Food and Drug Administration (FDA) has found e-cigarettes contain a number of toxins, carcinogens, and components suspected of being harmful to humans and acknowledges consumers of e-cigarettes have no way of knowing whether e-cigarettes are safe or how much nicotine or other potentially harmful chemicals are being inhaled; and

**WHEREAS**, although the FDA has banned youth marketing techniques and advertising for cigarettes and the FDA has taken the first step in establishing FDA oversight of e-cigarettes, there are no federal restrictions preventing the sale and advertising of e-cigarettes to youth;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges the Congress of the United States and the FDA to end the marketing and advertising of e-cigarettes to youth; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the each member of the North Dakota Congressional Delegation and the Commissioner of the Food and Drug Administration.

Filed March 28, 2019

## CHAPTER 577

### SENATE CONCURRENT RESOLUTION NO. 4008

(Senators Dwyer, Luick)  
(Representative D. Johnson)

A concurrent resolution urging the United States Department of Agriculture to use official government estimates when reporting world grain supplies.

**WHEREAS**, the United States Department of Agriculture reports monthly world agriculture supply and demand estimates; and

**WHEREAS**, other countries from around the world also have official government reporting estimates of world grain supplies; and

**WHEREAS**, examples of other official government reporting estimates include the Australian Bureau of Agricultural and Resource Economics, the Brazilian National Supply Company, Statistics Canada, the European Union Grains Commission, and the Argentina Agricultural Ministry; and

**WHEREAS**, in February 2018, based on the United States Department of Agriculture's supply estimates of Chinese wheat stocks, which were estimated as 53 percent of world wheat stocks, a line item was placed in the United States Department of Agriculture World Agricultural Supply and Demand Estimates report in the May 2018 crop estimate, eliminating China from the balance sheet, allowing for a more accurate assessment of world wheat trade as China is primarily an importer of grain; and

**WHEREAS**, in November 2018, China customs reported corn stocks 148.99 million metric tons above the United States Department of Agriculture's October Chinese corn stock estimate report, which increased the world corn supply by 93 percent from 159.35 million metric tons to 307.51 million metric tons in the November report; and

**WHEREAS**, the United States Department of Agriculture does not use the official grain estimates of other countries, and uses estimates higher than the estimates of private and governmental entities;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-sixth Legislative Assembly urges the United States Department of Agriculture to use official government estimates when reporting world grain supplies; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the United States Secretary of Agriculture and each member of the North Dakota Congressional Delegation.

Filed April 2, 2019

## CHAPTER 578

### SENATE CONCURRENT RESOLUTION NO. 4009

(Senator Sorvaag)  
(Representative Schmidt)

A concurrent resolution directing the Legislative Management to consider studying the feasibility and desirability of the water resource boards in each drainage basin forming a joint water resource board to plan and construct water conveyance projects based on basinwide needs.

**WHEREAS**, water conveyance projects may impact land in multiple water resource districts; and

**WHEREAS**, cooperation among the water resource boards in a common drainage basin may prove beneficial and cost-effective for residents of the basin; and

**WHEREAS**, planning water conveyance projects on a basinwide basis may result in more efficient use of water resources in this state;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management consider studying the feasibility and desirability of the water resource boards in each drainage basin forming a joint water resource board to plan and construct water conveyance projects based on basinwide needs; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed March 15, 2019

## CHAPTER 579

### SENATE CONCURRENT RESOLUTION NO. 4010

(Senators Bekkedahl, Wardner)  
(Representatives Hatlestad, Steiner)

A concurrent resolution directing the Legislative Management to consider studying postproduction deductions from royalty payments.

**WHEREAS**, total statewide oil production exceeded four hundred twenty million barrels in fiscal year 2018; and

**WHEREAS**, total oil and gas tax revenue collections exceeded two billions dollars in fiscal year 2018; and

**WHEREAS**, oil and gas production in the state is estimated to continue for fifty more years; and

**WHEREAS**, oil and gas development activity has a significant impact on North Dakota's economy; and

**WHEREAS**, some mineral owners and state agencies have expressed concerns regarding deductions from their royalty payments;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management consider studying postproduction deductions from royalty payments; and

**BE IT FURTHER RESOLVED**, that the study must include consideration of the methods used to calculate the value of oil and gas, the point of sale used to determine the value, oil and gas sales in the absence of an arm's-length contract, any deductions or incentives applied to the value, and the methods used to report any deductions or incentives on mineral royalty statements; and

**BE IT FURTHER RESOLVED**, that the study must include input from representatives from the oil and gas industry, representatives from an organization representing royalty owners, the department of mineral resources, the department of trust lands, the attorney general's office, and other state agencies; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed March 15, 2019

## CHAPTER 580

### SENATE CONCURRENT RESOLUTION NO. 4011

(Senators Meyer, Erbele, Holmberg, J. Roers)  
(Representatives Beadle, Blum)

A concurrent resolution urging the student bodies of the University of North Dakota and North Dakota State University to design and implement a new football rivalry trophy.

**WHEREAS**, beginning in 1938, the winner of the annual football game between North Dakota's two largest universities claimed the Nickel Trophy; and

**WHEREAS**, the Nickel Trophy has been officially retired and is on permanent display in the North Dakota Heritage Center; and

**WHEREAS**, with the 2020 football season, the University of North Dakota and North Dakota State University will again play on an annual basis as conference rivals; and

**WHEREAS**, this long-standing rivalry deserves a fitting rivalry trophy;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Assembly urges the student bodies of the University of North Dakota and North Dakota State University to design and implement a new football rivalry trophy.

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the student body president of the University of North Dakota and the student body president of North Dakota State University.

Filed March 15, 2019

## CHAPTER 581

### SENATE CONCURRENT RESOLUTION NO. 4013

(Senators Dotzenrod, Kannianen, Klein, Vedaa)

A concurrent resolution directing the Legislative Management to consider studying the distribution and transportation of food in the state necessary to the lives of individuals in rural communities, and the roles of state entities in facilitating the movement of food to rural areas of the state.

**WHEREAS**, since 2013, North Dakota has lost 15 percent of its grocery stores in towns with populations of fewer than 2,100 people; and

**WHEREAS**, small profit margins in the grocery store business make it difficult for store owners to keep up with building and infrastructure needs; and

**WHEREAS**, a considerable number of the state's population drive more than 10 miles to reach a grocery store that offers fresh milk, bread, meat, fruits, and vegetables; and

**WHEREAS**, there is a strong negative correlation between the distance people drive for food and those people's health; and

**WHEREAS**, the North Dakota Rural Grocery Initiative task force is studying the financial feasibility of collaborative purchasing, aggregation, and public-private partnerships to make the best use of existing infrastructure to improve the access, affordability, and variety of food in rural locations in the state; and

**WHEREAS**, it is imperative the state examines the law regarding the regulation, inspection, and health requirements that restrict some foods to limited distribution channels;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management consider studying the distribution and transportation of food in the state necessary to the lives of individuals in rural communities, and the roles of state entities in facilitating the movement of food to rural areas of the state; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed April 3, 2019



## CHAPTER 582

### SENATE CONCURRENT RESOLUTION NO. 4014

(Senators Hogan, J. Lee, Mathern)  
(Representatives Devlin, Weisz)

A concurrent resolution directing the Legislative Management to consider studying the implementation of the recommendations of the Human Services Research Institute's study of North Dakota's behavioral health system.

**WHEREAS**, in 2017-18, the Human Services Research Institute conducted a comprehensive study of North Dakota's behavioral health system for the Behavioral Health Division of the Department of Human Services; and

**WHEREAS**, a main objective of the study was to provide actionable recommendations for enhancing the comprehensiveness, integration, and cost-effectiveness of the state's behavioral health system to effectively meet the needs of the community; and

**WHEREAS**, in conducting the study, the Human Services Research Institute conducted focus groups, community listening sessions, and interviews around the state; and

**WHEREAS**, in April 2018, the Human Services Research Institute issued its final report detailing its findings from the study; and

**WHEREAS**, the Human Services Research Institute's behavioral health analysis identified 13 categories and 65 specific recommendations to direct future behavioral health public policy and services;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management consider studying the implementation of the recommendations of the Human Services Research Institute's study of North Dakota's behavioral health system; and

**BE IT FURTHER RESOLVED**, that in conducting the study, the Legislative Management receive regular updates on each of the major recommendation areas from the report; identify the availability, access, and delivery of behavioral health services; seek input from stakeholders, including law enforcement, social and clinical service providers, medical providers, mental health advocacy organizations, emergency medical service providers, juvenile court personnel, educators, tribal governments, and state and local agencies; and consider options for improving access and the availability for behavioral health care; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations to the Sixty-seventh Legislative Assembly.

Filed March 27, 2019

## CHAPTER 583

### SENATE CONCURRENT RESOLUTION NO. 4017

(Senators Heckaman, Kannianen, Marcellais, Oehlke)  
(Representatives Buffalo, Dobervich)

A concurrent resolution urging the Indian Affairs Commission to study the archaeological discipline, cultural resources, and the knowledge and expertise of tribal elders and tribal historic preservation officers to educate local, state, and federal agencies and the public and to facilitate effective consultation and cooperation for historic and prehistoric site identification and the betterment of North Dakota and its citizens.

**WHEREAS**, historic and prehistoric sites are significant in helping to tell the story of North Dakota's history before it became a state as well as tribal history and continuity; and

**WHEREAS**, respectful and culturally sensitive public education can help to further the goal of preserving culturally significant historic and prehistoric sites; and

**WHEREAS**, it is important to further mutual respect and understanding between state agencies and the tribes in the state regarding historic and prehistoric cultural resource sites and landscapes in North Dakota; and

**WHEREAS**, there is a need for state agencies, regional and private industry archaeological staff, and the public to better understand the tribal perspective on the importance, treatment, and protection of culturally significant historic and prehistoric sites in North Dakota; and

**WHEREAS**, education and discussion regarding the archaeological and tribal perspectives on historic and prehistoric sites would help provide a framework for determining culturally significant sites; and

**WHEREAS**, the Indian Affairs Commission is urged to consider coordinating with state agencies including the Department of Transportation, State Historical Society, and Public Service Commission and to consult with tribes on identification, evaluation, and preservation of culturally significant historic and prehistoric sites;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Indian Affairs Commission is urged to consider studying the archaeological discipline, cultural resources, and the knowledge and expertise of tribal elders and tribal historic preservation officers to educate local, state, and federal agencies and the public and to facilitate effective consultation and cooperation for historic and prehistoric site identification and the betterment of North Dakota and its citizens; and

**BE IT FURTHER RESOLVED**, that if studied, the Indian Affairs Commission is urged to report its findings and recommendations, together with any legislation

required to implement the recommendations, to the Sixty-seventh Legislative Assembly.

Filed April 12, 2019

# HOUSE MEMORIAL RESOLUTIONS

## CHAPTER 584

### HOUSE MEMORIAL RESOLUTION NO. 7001

(Memorial Resolutions Committee)

A memorial resolution for deceased members of the House of Representatives of North Dakota.

**WHEREAS**, God has welcomed to their eternal home our former colleagues:

Dr. Warren George Allen, who served in the 40<sup>th</sup> Legislative Assembly, from District 5, died October 12, 2017;

Myron H. Atkinson, Jr., who served in the 41<sup>st</sup> through the 44<sup>th</sup> Legislative Assemblies, from District 32, died June 12, 2017;

Arthur Glenn Bilden, who served in the 38<sup>th</sup> and 39<sup>th</sup> Legislative Assemblies, from District 5, and in the 40<sup>th</sup> Legislative Assembly, from District 19, died October 28, 2018;

Audrey Marie Boucher Cleary, who served in the 52<sup>nd</sup>, 53<sup>rd</sup>, 56<sup>th</sup>, and 57<sup>th</sup> Legislative Assemblies, from District 49, died February 5, 2019;

Jerroll Penryhn Ruedell Erickson, who served in the 33<sup>rd</sup> and 34<sup>th</sup> Legislative Assemblies, from District 28, died October 1, 2017;

Stephen Hugh Farrington, who served in the 44<sup>th</sup> Legislative Assembly, from District 14, died July 14, 2017;

James F. "Jim" Gerl, who served in the 42<sup>nd</sup>, the 45<sup>th</sup> through the 48<sup>th</sup>, and the 51<sup>st</sup> Legislative Assemblies, from District 34, died March 3, 2018;

William E. "Bill" Gorder, who served in the 46<sup>th</sup> through the 48<sup>th</sup> and the 52<sup>nd</sup> through 56<sup>th</sup> Legislative Assemblies, from District 16, died August 3, 2017;

Oben John Iver Gunderson, who served in the 42<sup>nd</sup> through the 47<sup>th</sup> Legislative Assemblies, from District 19, died September 5, 2018;

Treadwell Leslie "Tready" Haugen, who served in the 37<sup>th</sup> through the 39<sup>th</sup> Legislative Assemblies, from District 37, died September 25, 2018;

Jean Elizabeth Herman, who served in the 45<sup>th</sup> and 46<sup>th</sup> Legislative Assemblies, from District 44, died June 1, 2018;

Henning Jacobson, who served in the 52<sup>nd</sup> Legislative Assembly, from District 12, died May 18, 2018;

RaeAnn Gummer Kelsch, who served in the 52<sup>nd</sup> through the 62<sup>nd</sup> Legislative Assemblies, from District 34, died October 30, 2018;

David J. Koland, who served in the 47<sup>th</sup>, 49<sup>th</sup>, and 50<sup>th</sup> Legislative Assemblies, from District 5, died May 8, 2018;

William E. Kretschmar, who served in the 43<sup>rd</sup> through the 52<sup>nd</sup> Legislative Assemblies, from District 30, and in the 53<sup>rd</sup> through the 55<sup>th</sup> and the 57<sup>th</sup> through the 64<sup>th</sup> Legislative Assemblies, from District 28, died August 17, 2017;

Byron John Langley, who served in the 43<sup>rd</sup> through the 46<sup>th</sup> Legislative Assemblies, from District 12, died January 13, 2018;

George "Dale" Linderman, who served in the 38<sup>th</sup> and 39<sup>th</sup> Legislative Assemblies, from District 32, in the 41<sup>st</sup> and 42<sup>nd</sup> Legislative Assemblies, from District 13, and in the 43<sup>rd</sup> Legislative Assembly, from District 14, died October 16, 2018;

Dr. Edward H. Lloyd, Jr., who served in the 54<sup>th</sup> through the 57<sup>th</sup> Legislative Assemblies, from District 19, died March 17, 2019;

Herbert L. Meschke, who served in the 39<sup>th</sup> Legislative Assembly, from District 29, died May 19, 2017;

Honoratius Mathew "Ray" Metzger, who served in the 44<sup>th</sup> Legislative Assembly, from District 21, and in the 45<sup>th</sup> Legislative Assembly, from District 13, died September 9, 2018;

Alice Mae Miller, who served in the 52<sup>nd</sup> Legislative Assembly, from District 7, died April 1, 2017;

Dorothy Mae Moun, who served in the 47<sup>th</sup> Legislative Assembly, from District 22, died June 30, 2017;

Robert J. O'Shea, who served in the 45<sup>th</sup> and the 48<sup>th</sup> through 51<sup>st</sup> Legislative Assemblies, from District 8, died December 23, 2017;

George Albert "Bud" Sinner, who served in the 48<sup>th</sup> Legislative Assembly, from District 22, died March 9, 2018;

Robert Wayne "Bob" Stefanowicz, who served in the 56<sup>th</sup> Legislative Assembly, from District 2, died October 7, 2017;

Earl Loyal Stoltenow, who served in the 40<sup>th</sup> through the 43<sup>rd</sup> Legislative Assemblies, from District 25, died October 23, 2017;

E. Michael Timm, who served in the 43<sup>rd</sup> through the 49<sup>th</sup> and the 51<sup>st</sup> through the 59<sup>th</sup> Legislative Assemblies, from District 5, died August 17, 2018; and

**WHEREAS**, we now pause to mourn the passing of our former House of Representatives 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 26, 2019

# SENATE MEMORIAL RESOLUTIONS

## CHAPTER 585

### SENATE MEMORIAL RESOLUTION NO. 8001

(Memorial Resolutions Committee)

A memorial resolution for deceased members of the Senate of North Dakota.

**WHEREAS**, God has welcomed to their eternal home our former colleagues:

Robert E. "Bob" Albers, who served in the 45<sup>th</sup> through the 47<sup>th</sup> Legislative Assemblies, from District 33, died September 26, 2018;

John M. Andrist, who served in the 53<sup>rd</sup> through the 63<sup>rd</sup> Legislative Assemblies, from District 2, died January 17, 2018;

Stephen Hugh Farrington who served in the 45<sup>th</sup> and 46<sup>th</sup> Legislative Assemblies, from District 14, died July 14, 2017;

Harry Iszler, who served in the 43<sup>rd</sup> through the 47<sup>th</sup> Legislative Assemblies, from District 31, died April 6, 2018;

Byron John Langley, who served in the 49<sup>th</sup> through the 54<sup>th</sup> Legislative Assemblies, from District 12, died January 13, 2018;

Herbert L. Meschke, who served in the 40<sup>th</sup> and 41<sup>st</sup> Legislative Assemblies, from District 5, died May 19, 2017;

Charles Leehy Murphy, who served in the 36<sup>th</sup> and 37<sup>th</sup> Legislative Assemblies, from District 30, died April 4, 2017;

George Albert "Bud" Sinner, who served in the 38<sup>th</sup> and 39<sup>th</sup> Legislative Assemblies, from District 10, died March 9, 2018; 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 27, 2019